UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE:	. Chapter 11
	. Case No. 22-11068 (JTD)
FTX TRADING LTD., *et al.*,	.
	.
	. Courtroom No. 5
	. 824 Market Street
Debtors.	. Wilmington, Delaware 19801
	.
	. Wednesday, January 11, 2023
. . . . .	. 9:00 a.m.

TRANSCRIPT OF HEARING
BEFORE THE HONORABLE JOHN T. DORSEY
CHIEF UNITED STATES BANKRUPTCY JUDGE

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INDEX

INDEX

(Proceedings commence at 9:03 a.m.)

(Call to order of the Court)

THE COURT: Good morning, everyone. Thank you. Please be seated.

So, before we begin, let me just remind everyone about proper decorum, both in the courtroom and for those who are appearing online through the Zoom call. It's important that we maintain proper courtroom decorum.

If you are on the Zoom call, please leave your camera off and your line muted, unless you wish to be heard regarding one of the matters that are before the Court today. And disruptions won't be tolerated; anyone disrupting on the Zoom call will be removed immediately and not allowed back in.

Before we begin, I also want to address -- excuse me -- a letter that I received from four U.S. Senators. It's an inappropriate *ex parte* communication, number one. And number two, I want to make perfectly clear that I will make my decisions on the matters referred to in the letter based only upon admissible evidence and the arguments of parties-in-interest presented in open court.

I'm not going to docket -- I am going to docket the letter; in fact, I did that this morning. But it will have no impact whatsoever in my decisions in this case, which will only be based upon the facts and law presented by the

parties.

So, with that, we'll proceed.

MR. LANDIS: Good morning, Your Honor, and may it please the Court. Adam Landis from Landis, Rath & Cobb, counsel to FTX Trading Limited and its affiliated debtors.

We're here today, Your Honor, on second-day relief. We filed an amended agenda. It's 27 pages long, Your Honor, with 30 items on it. But thanks to the very hard work of many people in this room and lots of people out of it, I'm pleased to say that we have a limited number of matters that Your Honor is going to have to hear and decide today.

But before we get into the agenda, I'd like to cede the podium to Mr. Dietderich, who will give the Court and parties-in-interest an update as to activities that have been going on since we were last before you.

THE COURT: All right. Thank you.

MR. DIETDERICH: Thank you, Mr. Landis.

Good morning, Your Honor. May it please the Court, I have a short case update for the record.

The debtors filed for Chapter 11 60 days ago and the level of activity since has been extraordinary. We've identified over 9 million customer accounts with about 120 billion in associated transactions. We are engaged in a complex effort now to recreate petition date claim values for every customer.

We are building financial statements from the ground up using the general ledger and bank transaction records, rather than the previous incomplete and unreliable financial statements of the debtors. This will put us in the position to describe the financial results of the debtors accurately for the first time.

We have located over $5 billion of cash, liquid cryptocurrency, and liquid investment securities, measured at petition date value. This does not describe any value to holdings of dozens of illiquid cryptocurrency tokens, where our holdings are so large relative to the total supply that our positions cannot be sold without substantially affecting the market for the token.

The 5 billion in liquid assets also does not include approximately 425 million of crypto at petition date values in the custody of the Securities Commission of the Bahamas. That position was valued at about 170 million at the end of 2020. It contains a large amount of FTT and is highly volatile.

We have started a strategic review process for our assets. We have established data rooms and solicited interest for the four operating subsidiaries subjecting to the bidding procedures motion today.

We also are well underway on plans to monetize over 300 other nonstrategic investments with a book value of over

$4.6 billion.

We have established, Your Honor, cooperative relationships with the joint provisional liquidators in our only subsidiaries that are subject to separate proceedings, Australia and the Bahamas.

Our recently announced cooperation agreement with the JPL in the Bahamas is an important first step to align incentives and maximize joint recoveries. The principle of that agreement is simple: It does not matter who collects a dollar for customers, as long as the customers get it.

We've established a task force with the Official Committee of Creditors and the Bahamas JPL to explore alternatives for the sale or reorganization of the international platform.

We have cooperated and spent countless hours providing information to law enforcement.

These 60 days have already seen Mr. Bankman-Fried indicted, arrested, extradited, released on bail, and plead not guilty, with a trial date set.

We have seen Ms. Ellison and Mr. Wang plead guilty, make public plea statements, and cooperate with law enforcement.

And we have learned about what happened. We know how Sam Bankman-Fried instructed Gary Wang to create the Alameda backdoor, a secret way for Alameda to borrow from

customers on the exchange without permission. Mr. Wang created this backdoor by inserting a single number into millions of lines of code for the exchange, creating a line of credit from customers to Alameda, to which customers did not consent. And we know the size of that line of credit, it was $65 billion.

We know what Alameda did with the money. It bought planes, houses, threw parties, made political donations. It made personal loans to its founders. It sponsored the FTX Arena in Miami, a Formula One team, the League of Legends, Cochella, and many other businesses, events, and personalities.

It gambled on cryptocurrency investments, often unsuccessfully. And it made debt and equity investments in diverse businesses, many at prices that greatly exceeded market value at the time of the investment.

We know that all this has left a shortfall in value to repay customers and creditors. The amount of the shortfall is not yet clear. It will depend on the size of the claims pool and our recovery efforts. But every week, we come closer to completing the work necessary to estimate recoveries for the purposes of a plan of reorganization.

We also have begun to engage on the central legal issues in the case. These include the nature of customer entitlements, are they property or claims, and how to close

out derivatives to calculate petition date claim amounts.

Finally, we have established great working relationships with the U.S. Trustee, our new Official Committee of Creditors -- welcome -- and regulatory stakeholders around the world. Many people and many institutions have worked hard to get us here today. Chapter 11 is a fish bowl and we welcome that, in this case more than most.

And as a result of the effort by so many, we stand before you with only limited open issue on our second-day relief. This is despite the volume and the unique nature of many of the issues everyone has faced together.

Unless you have questions for me, Your Honor, I propose we move directly to the agenda. As Mr. Landis mentioned, it is an extremely long agenda, but it is mostly matters that have either been adjourned or reflected in orders that have been either entered or in agreed form.

For our point today, Your Honor -- maybe -- I'll cede -- also, Mr. Hansen is raising his hand. I'll cede the podium to him, if he would like to make some preliminary remarks.

THE COURT: Okay. Thank you.

Mr. Hansen.

MR. HANSEN: Good morning, Your Honor. Kris Hansen with Paul Hastings, proposed counsel to the official

committee. Just quick introductions. My partners Erez Gilad and Gabe Sasson are here with me today, as are Mr. Lunn and Mr. Poppiti, with our proposed co-counsel at Young Conaway.

The committee has also selected FTI Consulting as it's financial advisor and Jefferies as its investment banker.

Your Honor, the committee worked very hard behind the scenes with the debtors and the United States Trustee to try to make this hearing as consensual as it could be, and we appreciate the willingness of both parties to approach the motions on for today in a constructive manner.

With this being the committee's first formal appearance before the Court since its formation, I wanted to just take a moment to share a little bit of information about the committee and provide the Court with the committee's perspective on the cases at this time, if that would be okay.

THE COURT: That's fine. Thank you.

MR. HANSEN: Thank you, Your Honor.

Your Honor, first, the committee is comprised of nine members, including three individuals and six entities from eight different jurisdictions, spanning from Singapore to California. The committee members have broad exposure across the FTX exchange platforms and, sadly, share the moniker of "victim" with the millions of other customers who were defrauded by FTX.

The committee members understand the seriousness of their task to serve as fiduciaries for all creditors in these cases. And to that end, they will check the debtors at every step of these cases and take independent actions and generate their own initiatives to recover assets and maximize the distribution to creditors as rapidly as they can.

To date, the committee members have been active, engaged, and hard at work with the committee professionals in helping to resolve near-term issues, inserting itself in the investigation and asset tracing efforts that are underway by the debtors, and pushing the analysis of larger issues, such as whether the exchanges can be restarted and a restructuring path can be pursued as a complement to the asset recovery, monetization, and distribution efforts. And it's important to note that it's not too soon to start that exercise.

The committee also believes strongly in the principles noted at the outset of our reservation of rights on the debtors' motion to approve the bidding procedures. These cases need to be transparent, credibility needs to be restored, and creditors need to know that they can trust the Chapter 11 process.

As part of this effort, the committee is preparing a multifaceted approach for communicating with the global creditor community in these cases, which will include dissemination of information, not only through the standard

committee website, but through various forms of social media. The committee is aware of the disappointment of customers and creditors with the information-sharing efforts in some of the large, crypto-related cases, and we're trying to learn from that to do better here.

The magnitude and complexity of the global fraud and the lack of the corporate controls and recordkeeping present significant challenges to the realization of the committee's objectives, but the committee will work tirelessly to make its goals a reality.

We appreciate the few minutes, Your Honor, and the committee looks forward to working through these cases with you, the United States Trustee, the Department of Justice, the Bahamian liquidators, and the other parties-in-interest. And you'll hear more from us as we go through each motion today.

Do you have any questions for me, Your Honor?

THE COURT: No, no questions. Thank you very much. Appreciate the --

MR. HANSEN: Thank you.

THE COURT: -- introductions and the update.

I may institute something that I did during the Mallinckrodt bankruptcy, when I have dozen-page agendas with a lot of items that are moved off. I know the local rule says you have to list everything in them. What I did in

Mallinckrodt was say, if an item has been adjourned or has been resolved -- well, if it's been adjourned, specifically, you don't have to list everything out in that. Just put in the motion and that it's been adjourned to a different date.

MR. LANDIS: Thank you, Your Honor. For the record, Adam Landis. I see that you're directing that at me, and we will --

THE COURT: Yes.

MR. LANDIS: -- absolutely take our cues from what we were involved with in Mallinckrodt.

And I also would be remiss if I didn't extend some appreciation to chambers for the patience with which everyone has dealt with us as we've tried to get matters --

THE COURT: Sure.

MR. LANDIS: -- on the agenda. So thank you for that and we will take that advice.

THE COURT: All right. Thank you. Okay.

MS. KRANZLEY: Thank you, Your Honor. Good morning. For the record, Alexa Kranzley from Sullivan & Cromwell, proposed counsel for the debtors.

Your Honor, if acceptable to you, I will cover the matters that are listed on the agenda that have been resolved, so I'll go slightly out of order.

THE COURT: Okay.

MS. KRANZLEY: I'll start with Item Number 19 on

the agenda.

THE COURT: Well, let me interrupt you first, Ms. Kranzley. I did see the three additional COCs this morning, and I did enter those right before I came on the bench --

MS. KRANZLEY: Oh --

THE COURT: -- so those are entered, as well.

MS. KRANZLEY: Great. So then I think I only have one agenda item to address with you, which is Item Number 25 and 26, which is actually the motion of North American League of Legends to compel rejection or, in the alternative, relief from the automatic stay to terminate the sponsorship agreement.

Your Honor, while this is a third-party motion, the debtors had filed a motion to reject contracts on December 30th at Docket Number 333, which includes the sponsorship agreement that's the subject of this. We have been working with the counterparties. We have an agreed-to stipulation. And I understand from counsel that there will -- they will be filing a certification of counsel with the stipulation later today.

THE COURT: Okay. I remember that from the last hearing.

MS. KRANZLEY: Yes.

THE COURT: Yeah.

MS. KRANZLEY: So I think, with that, I'll hand the

podium to Mr. Glueckstein.

THE COURT: Okay. Thank you.

MR. GLUECKSTEIN: Good morning, Your Honor.

THE COURT: Good morning.

MR. GLUECKSTEIN: Brian Glueckstein, Sullivan & Cromwell, on behalf of the debtors.

Your Honor, the first contested matter on the agenda today is listed at Agenda Item Number 20, which is the debtors' motion for final relief, asking the Court to authorize consolidated creditor matrix and to redact certain customer and creditor information.

Your Honor, we filed a declaration at Docket Number 411, the declaration of Kevin Cofsky, in support of the relief requested today. Mr. Cofsky is here in the courtroom and available. We would like to admit Mr. Cofsky's declaration into evidence in support of this motion at this time.

THE COURT: Okay. Is there any objection?

MR. FINGER: Yes, Your Honor.

THE COURT: Step forward.

MR. FINGER: Good morning, Your Honor.

THE COURT: Good morning.

MR. FINGER: David Finger for the media objectors.

Actually, I was going to file -- I was going to ask -- request -- make a motion to strike Mr. Cofsky's

declaration. I'm not sure if he's testifying as a fact witness, which I don't think he is, but to the extent he is, there's no indication that he has firsthand knowledge of the matters about which he's testifying. And if he's testifying as an expert, he has not established his expertise. There is nothing indicating that he has any experience in the cryptocurrency market.

He testifies at a couple of paragraphs, Paragraph 7 and 8, of his "understanding," in quotes, but does not identify the source of his understanding, so that the Court can determine the credibility of those understandings.

He also testifies repeatedly as to his "belief," again in quotes, as to certain conclusions. That's in Paragraphs 8, 9, 11, and 13. He does not offer any objective support for his subjective belief.

Now the U.S. Supreme Court in --

THE COURT: Hold on one second, Mr. Finger. I don't know if we're -- can we -- he -- it's kind of -- I don't know if the people in the back of the courtroom can hear. I think those microphones needs to be turned up maybe a little bit.

MR. FINGER: I can try to talk louder.

THE COURT: Or you can lift them. And talking louder would be helpful, too, yes.

MR. FINGER: All right. The Supreme Court in

Daubert said, to satisfy the requirement of specialized knowledge to qualify as an expert, there must be more than a subjective belief or unsupported speculation.

As Mr. Cofsky did not provide support for his beliefs and understandings, he does not meet the requirements for an expert and his declaration should, therefore, be stricken.

THE COURT: All right. Mr. Glueckstein?

MS. SARKESSIAN: Your Honor, I have a similar objection.

THE COURT: Oh, go ahead --

MS. SARKESSIAN: Could I --

THE COURT: -- Ms. Sarkessian.

MS. SARKESSIAN: Thank you, Your Honor. If it pleases the Court, Juliet Sarkessian on behalf of the U.S. Trustee.

I thought it might make sense for me to --

THE COURT: Yes.

MS. SARKESSIAN: -- give my objection now, so that debtors' counsel can address everything at the same time.

So, in -- I -- first of all, the U.S. Trustee does agree that some of the testimony in Mr. Cofsky's declaration appears to be of the nature of an expert witness and his expertise in this area has not been established.

And in particular, in paragraph -- well, I have

questions to ask Mr. Cofsky about the statements in Paragraph 7 of his declaration, depending -- as to whether that's based on personal knowledge. So, depending on his answers, I may object to that.

But with respect to Paragraph 11, he has statements like "it is common knowledge."

And then later in the paragraph:

"-- potential buyers of the debtors' assets will likely ascribe material value to the debtors' customer lists"

That's speculation.

And then I also object, in Paragraph 12, at the end, he cites a valuation expert that is somebody other than himself and quotes out of, I guess it's a book. So we object to that as hearsay.

And again, I do have some questions with respect to some of the information in Paragraph 7, to determine if that's based on his personal knowledge, and then I also have cross-examination for the witness, as well.

THE COURT: All right.

MS. SARKESSIAN: Thank you, Your Honor.

THE COURT: Any other objections?

(No verbal response)

THE COURT: All right. Mr. Glueckstein. I'll tell you up front, Mr. Glueckstein. If I have an objection to the admissibility of a declaration, I usually just allow -- or

require that the witness just testify live, and maybe we can resolve some of these issues by testimony. But go ahead, if you have anything else.

MR. GLUECKSTEIN: That's fine, Your Honor. Mr. Cofsky is the debtors' proposed investment banker. He's offering his opinions in the declaration with respect to matters that are raised by the motion today. We think it is admissible.

But if it's Your Honor's preference, I'm happy to call Mr. Cofsky and walk through the issues in his declaration live.

THE COURT: All right. Let's do that. Let's call Mr. Cofsky to the stand and we'll do it live and deal with any objections as they come.

(Participants confer)

THE COURT: Mr. Cofsky, please take the stand and remain standing for the oath.

THE COURT OFFICER: Please raise your right hand. Please state your full name and spell your last name for the Court.

THE WITNESS: Kevin Michael Cofsky, C-o-f-s-k-y.

KEVIN COFSKY, WITNESS FOR THE DEBTORS, AFFIRMED

THE COURT OFFICER: You may be seated.

MR. GLUECKSTEIN: Your Honor, may I approach the witness and give him a copy of his declaration?

THE COURT: Yes. Could you hand me --

MR. GLUECKSTEIN: Yes.

THE COURT: I can't seem to find it. I usually have these things --

MR. GLUECKSTEIN: I --

THE COURT: -- electronically, but I can't --

MR. GLUECKSTEIN: I have --

THE COURT: -- find it.

MR. GLUECKSTEIN: -- a copy for you, as well, Your Honor.

THE COURT: Okay. Thank you. Thank you.

DIRECT EXAMINATION

BY MR. GLUECKSTEIN:

Q Good morning, Mr. Cofsky.

A Good morning.

Q Mr. Cofsky, can you provide a little bit of background about your experience to the Court this morning?

A Yes. Would you like me to go through education or --

Q Just a little --

A -- professional --

Q -- bit about --

A -- experience?

Q -- your work experience and qualifications in the -- yeah, in the area and scope in which you are performing services for the debtors.

THE COURT: Mr. Cofsky, can you please move the microphone closer to you, so we can --

THE WITNESS: Yes, sir.

THE COURT: -- make sure we hear you? Thank you.

THE WITNESS: I studied finance at the Wharton School of Business as an undergraduate. I was a financial analyst at Houlihan Lokey for two years, from 1992 to 1994.

After law school and practicing law for a period of time, I returned to investment banking in 2001. I was with a firm called the Beacon Group, as well as Evercore Partners, where I was a managing director in the restructuring group.

I joined a small firm that merged into Perella Weinberg Partners upon its founding in 2006, and I have been with the firm since that time. I've been a partner with the firm since 2015.

BY MR. GLUECKSTEIN:

Q And can you describe for the Court just generally the scope of work which yourself and your colleagues at Perella are proposed to assist the debtors with in these cases?

A Yes. We are the proposed investment banker for the debtors. We've been working with the other professionals and with the management team and the board on a wide range of issues, including understanding the assets of the debtors, evaluating potential for reorganization of some of the businesses, as well as potential sales of the businesses.

And in general, our mandate is to explore different potential avenues to maximize the value of the debtors' assets through this process.

Q In your experience, Mr. Cofsky, have -- prior to this case, have you been involved in situations where the monetization of businesses includes the monetization of things such as customer assets or customer lists?

A Yes, I have been.

Q Can you elaborate on that at all, in terms of the types of work you've done in that area?

A Yes. Most recently, we've been involved in the Celsius bankruptcy case, pursuant to which the customer -- the value and the potential value of the customers has been at issue. But we've also seen -- while we are not running the sale process, we have been evaluating that. And we appreciate the extent to which potential acquirers of that business have evaluated the value of the customers and their various positions on that platform.

Q Are there other examples that you can recall where the question of customer assets or customer lists have been at issue in transactions that you or your team have been involved in, in the past?

A Yes. The -- the identity and value of customers are often considered to be quite valuable in the context of retail businesses, consumer-facing businesses --

MS. SARKESSIAN: Your Honor, I'm going to object.

THE COURT: Basis?

MS. SARKESSIAN: I think he's testifying about what potential buyers look for, and he does not have personal knowledge about that.

THE COURT: Well, he's an investment banker. He buys and sells companies, right?

MS. SARKESSIAN: I think, Your Honor, if he could be more specific about the basis of that knowledge and exactly who he's talking about.

THE COURT: Well, is that a foundation for his knowledge, Mr. Glueckstein?

BY MR. GLUECKSTEIN:

Q Mr. Cofsky, can you back up a half-step and explain to the Court your role in your transactions that you can recall that have involved customer assets in the past?

A Yes. I want to try to be specific because this is a unique situation. And I would refer most specifically to, in my declaration, I think, the other exchanges the other crypto companies and the extent to which they clearly have indicated that they value the identity of customers. And they have -- all of the other crypto companies that we have evaluated have programs in place to compensate for the provision of that information.

We have also been a party to situations, as I indicated,

most recently in the Celsius case, where we have seen that bids have explicitly provided incremental value for each customer that is acquired.

Q Have you, Mr. Cofsky, considered as part of your work as proposed investment banker in this case the debtors' customer list that they have available to them here?

A I'm sorry. Can you repeat that question, please?

Q In the context of -- in the context of the work that you've done -- that you're doing as the debtors' proposed investment banker in this case, have you considered the debtors' customer list as part of the strategic review that you've undertaken?

A Yes, we have.

Q With respect to the ongoing strategic review, have you, as the debtors' investment banker, formed a view as to whether there is value in the debtors' customer list?

A Yes, we have, and we do believe that there's value in those assets.

Q And can you explain for the Court the basis for that conclusion?

A Yes. We believe that, whether the exchanges are reorganized or whether they are sold in connection with our process, both the exchanges that we're currently marketing, as well as the core business that we're currently evaluating, we believe that the value of the business is maintained and

maximized by ensuring that competitors are not able to solicit those customers and onboard them onto their platforms in a manner which would result in a reduction in the value of the estate.

So, for example, if other businesses that compete with FTX had the identity and were able to locate these customers, solicit them, put them on their platform while FTX is in bankruptcy and not currently operating in the ordinary course, that would reduce the value of the estate.

Whether the estate, ultimately, is able to reorganize its core business or whether third parties are evaluating the acquisition of those exchanges, they will place, in our view, a greater value on those exchanges if all of the customers are maintained on that platform and have not found another exchange on which to transact.

Q Mr. Cofsky, with respect to -- we've been talking about the customer information, do you view it important to maintain, during your strategic review process, the anonymity of both names, in addition to contact information, or are contact information alone sufficient?

A We -- it's a very good question and we -- we looked into that. We -- we reviewed the customer lists. There are a number of -- excuse me -- customers whose names are unique. And we were able to, very quickly, locate them through searches on social media, as well as other professional

relationship databases. And we came to the conclusion that it would be quite easy to locate, identify, and contact those customers, even starting with only the customer names. And that relates to individuals, as well as businesses.

Q Mr. Cofsky, if you could look at the declaration that you submitted in this case that's in front of you.

A Yes, I have it.

Q And it's filed at Docket Number 411, entitled:

"Declaration of Kevin M. Cofsky in Support of the Debtors' Motion for Entry of an Order Authorizing the Debtors to Redact or Withhold Certain Customer Information."

Mr. Cofsky, were you involved in preparing the declaration that was submitted to the Court at Docket Number 411?

A I was.

Q And do you believe, to the best of your knowledge, that the information presented in that -- in your declaration reflects your views, again, to the best of your knowledge?

A Yes, I do.

Q Okay. If you can go to Paragraph 12 of your declaration. You state in the first sentence there:

"Additionally, it is well established that customer information such as names and contact information are separately valued intangible assets of an entity."

Do you see that?

A I do.

Q Can you explain to the Court the basis for the statements that you made there in Paragraph 12 and beyond that sentence in Paragraph 12?

A Yes. I'd answer that in a number of ways:

First, as indicated further in this particular paragraph, in the context of a "business combination," as that's designed by Accounting Standard Codification 805, intangible assets are valued and allocated in a certain manner, and customer-related assets, customer lists are a component of that. We thought that that was significant.

I also indicated in the paragraph, having reviewed some academic literature, the -- in particular, the book by Jeffrey Cohen, Intangible Assets: Valuation and Economic Benefit, again, the value ascribed to customer lists, particularly the economic value that is indicated particularly by instances where companies choose to keep that information secret, to the extent that they can.

In addition, as I had indicated in the prior paragraphs, it was very relevant, in our view, significant as we evaluated this particular situation and the landscape -- the competitive landscape within which this company operates, that all of its competitors value this information. This is a new and expanding field. And it's not entirely clear to businesses that are seeking to expand their asset base and

their customer list exactly who they should be targeting.

And so all of the competitors that we looked at indicated that they provide economic -- that they ascribe economic value to these customers. And the indication, the evidence of that was -- I won't read through the words on the page, but Binance and Coinbase and Kraken and Kucoin all provide financial incentives for the referral of customers and the retention of customers.

We also reviewed the bids that had been submitted in the Voyager case and in the Celsius case and took note of the fact that, not only were customer assets and lists being acquired in -- and a value ascribed to the business itself, but that there were actually incremental elements of value which would be allocated to each customer that went onto the acquirers platform. And in the initial case of the prior bid from FTX to Voyager, to the extent that customers maintained their accounts on the platform for a period of time, they would -- they would receive incremental value. And so there was specific value acscribed to each customer -- the name, the identity, the assets -- as they moved onto the platform of the buyer.

Q Thank you.

With respect, Mr. Cofsky, if you look at Paragraph 13 of your declaration, the last paragraph there.

A Yes.

Q You wrote in the declaration in the last sentence:

"I believe an important component of that strategy is maintaining the confidentiality of customers' identities and personal identifying information."

And then you end by saying:

"Disclosing those customer lists would therefore jeopardize the debtors' ability to maximize value."

Do you see that there?

A I do.

Q Do you stand by that testimony this morning?

A I do.

Q And can you elaborate for the Court your view as to why disclosing the customer lists would jeopardize the abilitiy to maximize value?

A Yes. As I indicated, whether we reorganize, are able to reorganize the businesses, or whether there will be an acquisition of the core business and the other exchanges, we believe that the business itself is comprised of a number of components, and a significant component of the business is the customers themselves.

The customer assets are obviously important. But what the customers choose to do going forward will be a significant driver of value. And we think that third parties will place significant value on that in a sale process. So, to the extent that those customer lists, the identity of the

customers are able to be maintained without broad disclosure, that will give buyers confidence that what they are buying is actually of value, and that they alone will be able to maximize the value of putting those customers onto their platform.

I think the same logic holds for a reorganized entity. To the extent that the exchange is able to be rehabilitated and reorganized, it will, in our view, have more value if those customers have not been poached and are -- by competitors, and are, therefore, not transacting on another exchange.

Q Mr. Cofsky, Paragraph 6 of your declaration you submitted to the Court, if you'd turn there. It says -- you write in the first sentence:

"The debtors, with the assistance of PWP, have commenced an extensive outreach effort as part of marketing the debtors; businesses and assets for potential sale."

Do you see that?

A Yes, I do.

Q And that sentence is accurate --

A Yes.

Q -- correct?

A Yes, that's correct.

Q Do you have any sense, at this time, how long the process of outreach and monetization of assets and

reorganization is likely to take?

A We have filed the bidding procedures for the four exchanges, as you know, and have a time frame enumerated in the bidding procedures. We've had significant interest in those assets to date. We would expect that we will be in a position to evaluate those potential -- if the Court approves the bidding procedures and if we move forward with that process, we would be in a position to evaluate those bids relative to a standalone reorganization of those exchanges in a matter of months. I don't want to be too specific because we're at the earlier stages of that process and there's a lot of work that needs to be done.

Similarly, the core exchange, as the UCC counsel indicated earlier, it's not too soon, and we have already initiated a review of a reorganization of the core exchange and that process is ongoing. We, as you know, have not launched a sale process with respect to the core exchange, but we expect to run a simultaneous reorganization, as well as sale process for that exchange.

I -- it's difficult to say with too much specificity at this point, given the -- given the work that will need to be done and the collaboration with the UCC on -- on the broader exchange process, the sale as well as the reorganization efforts. But I would expect that we'll be talking a matter of months before that type of a sale and

evaluation of a reorganization will be initiated robustly.

Q Thank you, Mr. Cofsky.

MR. GLUECKSTEIN: No further direct, Your Honor.

THE COURT: Okay. Thank you.

Cross.

MS. SARKESSIAN: Thank you, Your Honor. For the record, Juliet Sarkessian on behalf of the U.S. Trustee.

Your Honor, I just have a question, a clarification. Debtors' counsel asked the witness, you know, did you participate the declaration, is it true and correct to the best of your knowledge, information, and belief. I just want to be clear that the affidavit itself is not coming into evidence and it is only the witness' testimony that is coming into evidence.

THE COURT: That's correct.

MS. SARKESSIAN: Thank you.

CROSS-EXAMINATION

BY MS. SARKESSIAN:

Q Mr. Cofsky, you spoke about doing a search using just the names of a number of the debtors' customers to see if you could find other contact information based on their names, correct?

A Yes.

Q And by "contact information," I assume, you know, an email address, a street address, something -- telephone

number, something of that nature?
A Yes, as well as information on social media platforms and ability to identify the individual -- we believe identify the individuals and their interest in crypto.
Q And identify them in a way that you could communicate with them?
A Yes.
Q How many names did you do that search for?
A I directed my team to evaluate that. I believe, of the 9 million customers, it was not close to 9 million, more than a dozen, dozens, I believe; enough that, once we had a sufficiently high probability of hit rate, we believed that was indicative of our ability to identify these customers.
Q So let me try to pinpoint this down. Are you saying a dozen, a few dozen? What's the correct number?
A I -- I don't have a specific number. I believe it was in the high teens.
Q In the high teens.
A Yes.
Q Okay. So less than 20 people.
A I believe that we chose to search for under 20, and our hit rate on those names was very high. In other words, we were able to, based on the names, locate information and be able to correspond with -- we didn't correspond with, but we believe we would be able to correspond with customers over 50

percent of the names that we searched on.
Q Okay. So you searched less than 20; and, out of those 20 names, about 50 percent you would have been able to -- you were able to get some type of con -- some type of contact information or some way to contact those individuals.
A It was over 50 percent. I don't know the specific probability. But yes, I think that generally characterizes my comments.
Q Okay. And you did not run any of these searches yourself.
A I actually did run one or two. But -- but in general, I asked my team to do that, yes.
Q And the names you picked, did you say that they were unusual names, as compared to a Sue Brown or something like that?
A Yeah. It's a good question because, to the extent that there are generic names -- John Smith, Mary Jones -- yes, we agreed that would be difficult to identify the specific person. We looked at names that were not of that type.
And in general, I was also very interested, I reviewed the customer list myself to -- to assure myself that this was an accurate assessment and to evaluate, to your point, whether I thought that these names, in and of themselves, were meaningful. And there were -- again, I didn't do a search of the 9 million customer names to give -- and I can't

give you a specific probability or percentage. But a significant -- the vast majority of the names were not of that type, were not of the John Smith/Mary Jones type.

Q Meaning the vast majority of the names that you searched or the vast majority of the 9 million names are not --

A I can't say the 9 million names. I -- I looked through the database and scrolled through the first several hundred largest, so I went through in customer size order. And the vast majority of the names I saw were of a unique type that I believed were not of the John Smith/Mary Jones type, where it would not necessarily be useful to do a search for those.

Q Were a good number of those names not, I guess I would say common, say American names? Were they names that might be names of people living in other countries or names with -- you know, not a Sue Brown, that -- Sue Brown is a very American name. You know, we have customers, right? All over the world, right?

A Yes.

Q And so a name that might sound a little unusual in the United States might not be that unusual in India or China. Isn't that true?

A I -- I think I understand your question. In my experience, there's a wide variety of names in the United States. We didn't place a lot of value in whether the name sounded western or sounded Asian, for example. We did a --

we tried to have a -- just an unbiased perspective as we did the search.

Q Are you personally familiar or knowledgeable about how common a particular name might be in China or India?

A I -- I -- I'm not sure how to answer that question. What I can tell you is that, when we did the searches, to the extent that there was a -- if there had been a large result set from a particular search, such that we didn't believe that we would actually be able to locate and contact and correspond with a customer, then that would have put that name, regardless of the reason, in the category of names that we did not believe we could actually contact through a search, again, regardless of whether it was a common name or for any other reason; they didn't have a social media presence, they protected their identification. I -- I didn't speculate.

Q Thank you.

Now, with respect to non-individuals, institutional customers -- and I understand that it would probably be pretty easy to locate contact information for an institutional customer, right? You agree with that, right?

A Depending on the institution, it may be easier, yes. Institutions generally have more of a footprint.

Q Although, there are -- I guess there are some institutional customers that might not be that easy to find

contact information for. You're saying smaller institutional customers -- I -- institute -- I shouldn't use "institutional."

Non-individuals. Are there some non-individual customers that might be harder to find contact information for, with just the name and nothing else?

A I -- I'm -- can you repeat the question? I'm not sure exactly what you're --

Q Okay. I'll move on.

A -- asking.

Q I'll move on to a different question.

With respect to non-individual customers -- I'm trying to think of the best way to put this. Companies that are looking for -- competitors of the debtors, the people -- the competitors you're concerned might poach customers. With respect to non-individual customers, institutional customers, aren't there sources that those competitors could go to, to find potential institutional customers that are interested in cryptocurrency or keeping accounts on cryptocurrency exchanges, other than looking at a customer list of a particular -- of the debtors', for example?

A I'm sure, if there are places where businesses that are seeking to acquire customers -- I'm sure, if there are indicators of interest in crypto, those businesses that are seeking customers have already utilized those external

sources. I don't know how that -- I guess I understand your question, but I'm trying to be careful about how I answer it only because I -- I -- I don't want to inadvertently share information about the customers. But there are a number of institutional customers that are unique, and the names of those -- excuse me -- institutions may not be widely known to the public or to the competitors in this industry.

And so I don't know -- I don't believe that simply -- that the existence of other information sources materially changes my testimony here. I think the -- the critical element here is that these institutions and individuals have indicated by their activity on the exchange that they participate in this particular activity and that they would be valuable to a competitor or someone interested in acquiring this business in the future precisely because they have participated in this activity.

Q Now, Mr. Cofsky, is it your understanding that, prior to the bankruptcy filing, that all of the accounts of the debtors' customers were frozen?

A Yes, I believe that's correct.

Q And they've been frozen since that time, correct?

A To the best of my knowledge, yes.

Q Are you aware that there are allegations of billions of dollars of customer -- funds in customer accounts were effectively raided to make loans to Alameda; are you aware of

those allegations?

MR. GLUECKSTEIN: Objection, Your Honor. I think we're pretty outside of the scope of the testimony for this motion.

THE COURT: What's the relevance to his testimony, Ms. Sarkessian?

MS. SARKESSIAN: I believe that this witness' testimony is that these customer names should not be disclosed because they could be subject to poaching. My point is that I want to ask this witness to sort of develop what the situation was coming into the bankruptcy with respect to these customers and whether these customers might be interested in moving their funds out of the debtors' accounts for reasons that have absolutely nothing to do with potentially being contacted by some other competitor.

I mean, this is not a regular case where, you know, a business is having some financial trouble, they file for bankruptcy, they might be able to reorganize. They could be able to keep the customers; or, if they sell the business, the customers may want to go with it.

I would suspect that these customers may be rather upset about the current situation; and, therefore, I don't think poaching is the real problem here. If the concern is that these customers are going to leave the platform, I think they may be leaving the platform for reasons that don't have

to do with poaching. So that was my -- what I was trying to develop with the witness. But I guess I can save that for oral argument --

THE COURT: Okay.

MS. SARKESSIAN: -- if we want to do it that way.

THE COURT: Yeah, I think it is outside the scope of his direct testimony, so ...

MS. SARKESSIAN: Thank you, Your Honor. I think that finishes my cross-examination --

THE COURT: Okay.

MS. SARKESSIAN: -- of this --

THE COURT: Thank you.

MS. SARKESSIAN: -- of this witness on this particular motion. I will have cross on one of the other motions.

THE COURT: Understood. Thank you.

Mr. Finger.

MR. FINGER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. FINGER:

Q Good morning, Mr. Cofsky.

A Good morning.

Q Just a couple of preliminary questions, if I may, before we get into heavier stuff.

In your affidavit, you say you're a partner at Perella

Weinberg Partners, LP, correct?

A Correct.

Q And that is the debtors' proposed investment banker. I don't know if the Court (indiscernible) to that effect --

UNIDENTIFIED: I'm sorry.

Q -- but --

UNIDENTIFIED: Could I just --

THE COURT: Yeah. We're having a hard time hearing you, Mr. Finger. You're going to have to speak up and --

UNIDENTIFIED: Maybe move the mic.

MR. FINGER: Yeah, I'm sorry, Your Honor.

THE COURT: All right.

MR. FINGER: Age has done its number on my voice.

BY MR. FINGER:

Q You -- Perella is the proposed investment banker for the debtors, correct?

A Correct.

Q Okay. When were you asked to make this declaration, to the best of your recollection?

A I -- I don't recall if it was before the New Year --

Q Okay.

A -- or somewhere thereabouts. Over the holidays, I believe.

Q So sometime in December. Is that fair?

A Yes, I believe that's correct.

Q At Paragraph 4 of your affidavit -- declaration, you identify a number of matters you've worked on. Do you see that?

A I do.

Q Which of those involved cryptocurrency?

A None of those involved cryptocurrency.

Q Okay. Page -- at Paragraph 7 of your declaration, you say that -- in the second sentence:

"A hallmark feature of cryptocurrency is a holder's ability to remain anonymous to the public."

Do you see that?

A Yes, I do.

Q Okay. Do you know whether -- are you familiar with Bitcoin?

A I am.

Q Okay. Do you know whether Bitcoin can be traced to the holder?

A I wouldn't put it in quite those terms. When you say "traced to the holder," I know that Bitcoin can be traced on the blockchain and it can be traced to the wallet. And so, to the extent that one is able to identify the owner of the wallet, one can trace to a particular user. But tracing to the wallet is not necessarily the same as tracing the -- it -- identifying the owner of the wallet.

Q Well, do you agree -- strike that.

Are you familiar with circumstances where authorities have recovered Bitcoin or other type of cryptocurrency --

A I'm --

Q -- by --

A -- generally --

Q -- tracing it to the holder?

A I'm generally aware of that, yes.

Q Okay. Now I want to turn to the statement you make in Paragraph 9:

"I do not believe that it would be difficult to look up and, in the case of the debtors' competitors, poach the debtors' customers if their names were to be made public."

Now the U.S. Trustee has asked you some questions on that, and I'll try not to duplicate.

First, practically, the names you get, do they include a middle initial?

A In some cases, yes.

Q Okay. Would you agree that it might be harder to trace someone, to find someone absent a middle initial?

A I think it -- you say "harder." Than what?

Q If you --

A Harder than what?

Q I'm sorry. I apologize.

If you have two names, Joe Smith, let's say, and one

says Joe Smith, and the other one says Joseph R. -- Joe R. Smith. Would the "R" be an identifier that could make it easier to locate, track down the owner?

A If your question is -- if you don't mind, I'm trying to be helpful here. The greater the lever of the identifying information, as a logical matter, I would agree the easier it would be to identify that particular user.

Q Okay.

A In this case, we -- we didn't look at the customer list and simply speculate about whether we would be able to locate and potentially correspond with users.

Q Uh-huh.

A We actually did the searches to determine whether that would be the case. So I -- I don't disagree with the logic of incremental information being more useful than less information, but we didn't rely upon the logic alone.

Q Thank you.

Now, in response to questions from the U.S. Trustee, you discussed the methodology your team used and the results they recovered, correct?

A Generally, yes, although I didn't go into too much detail about the methodology.

Q Have you made any documentation during that process to either the U.S. Trustee or me?

A You’re asking have we provided any documentation with

respect to those searches and the results of those searches.
Q Well perhaps I'm being presumptuous, so let me step back.
In the course of that procedure were there written notes, or reports, or results that were represented to you?
A I did not review any written reports. I don't know if they exist. I had conversations with my team.
Q Okay. So you are reporting to us statements made by your team, correct?
A That is correct.
Q Do you know whether there was any documentation, be it email, be it written findings, regarding this process and the results -- and/or the results.
A Yeah, I don't know. As I said, I specifically recall that I spoke with the team and directed them to undertake these searches and then we followed up with a physical conversation regarding the results. I don't know if there was any correspondence among the team members, but I don't recall having reviewed a report on this question.
Q So do you -- as best as you can recall, did your team report back to you orally?
A Yes. That is correct.
Q So there is no way -- strike that.
You would agree with me there is no way anyone, the U.S. Trustee, me, or the Court, can validate what your team

did, is that correct, independently?

A I think it would be -- it shouldn't be particularly difficult to independently validate. I think it would be -- I don't think you need to have this customer list in order to undertake your own assessment of whether given a particular set of individuals' contact information or names you would be able to locate those individuals online and be able to find enough information to be able to contact them.

Q But I think you agreed, in response to questions from the U.S. Trustee, that the degree of difficulty depends on the degree of commonality of the name, correct?

A I don't think that is exactly what I said.

Q I am paraphrasing. I agree.

A Yeah, I want to be clear that to the extent that there are names of the John Smith, Mary Jones type it would be very difficult to identify -- it would be more difficult to ensure that identification of that particular individual would be the individual on the customer list just given the common nature of the name.

So when we reviewed the customer lists I personally reviewed the customer list to determine and evaluate the extent to which the predominance were of that type of not and my conclusion was that they were substantially not of that type. But, yes, I would agree that to the extent that there is a very common name it would be more difficult to locate

that particular individual.

Q Let me make sure I understand; did you review -- how did you select the names?

A I reviewed the customer lists to ensure -- to assure myself, in the first instance, that -- I wanted to understand the relative size, concentration. I wanted to understand the extent to which the names of the institutions or the individuals were unique or general in nature.

I then asked my team, whose more technologically savvy then I am, to see if they would be able to locate these individuals or institutions by using generally available search technologies. And the response was relatively quick that there was a high hit rate in being able to locate these individuals.

To be clear, the information that we were able to locate was of a type that gave us a relatively high degree of confidence that these were the right individuals. We didn't correspond with them and so we can't say with absolute certainty, but their social media footprint indicated that they had a significant interest in crypto. And we evaluated their postings on various social media platforms, etc., which gave us a high level of confidence that the individual who we were searching for was actually the individual that we had located.

Q Again, I am going to bear dance a little bit; you said

you reviewed the client list, correct?

A The customer list, that's correct, yes.

Q How many customers are on that list?

(No verbal response)

Q I'll make it a little easier; as the opening today counsel for the debtors used the number 9 million. Does that seem about right?

A I have seen the number 9 million. I did not search through 9 million.

Q How many did you search through?

A Hundreds. I -- so I had an Excel spreadsheet with that information and it had the identifying information and the entitlement amount. I scrolled down, I can't say specifically, but several hundred because I was interested to know exactly -- again, as I indicated, I don't want to take up too much time repeating myself, but I wanted to make sure that, again, these would be unique names and identifiers.

Q And what did you -- what methodology did you use to determine that the 100 or 200 that you looked at were, in terms of commonality, the names were representative of the list as a whole?

MR. GLUECKSTEIN: Your Honor, I'm just going to object. This was all asked and answered by the United States Trustee.

THE COURT: I think we did go through this

already, Mr. Finger.

MR. FINGER: We did, but I don't think that -- maybe I'm wrong, but I don't think there was any specific question regarding how the determination was made as to whether this sampling is a representative sampling.

THE COURT: I will give you some leeway, go ahead. Let's not retread ground we have already been through.

THE WITNESS: I didn't have a sophisticated methodology. I used my judgment that after having gone through page after page, after page, after page and seeing relatively the same type of information that that would be consistent. I knew I wasn't going to search through millions.

So after I scrolled through I believe that I also asked my team to do a sampling. I didn't want to just focus on the largest 20 customers, for example, but to be clear I just exercised my judgment and I didn't have a specific rubric or algorithm.

BY MR. FINGER:

Q Did you have any guidelines in determining how common or uncommon a given name would be other than your instinct?

A Yeah, again, I did not have anything other than my own judgment and my team's judgment to base that decision on.

MR. FINGER: Thank you. I have no other questions.

THE COURT: Thank you.

Anyone else wish to cross?

(No verbal response)

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. GLUECKSTEIN:

Q Mr. Cofsky, just very briefly.

Counsel just pointed you to Paragraph 4 of your declaration. That reflects certain experience. Do you see that?

A Yes.

Q Outside of what is listed there in Paragraph 4 can you just state for the Court -- I believe you addressed this in your overview at the beginning, but can you state for the Court experience you have specifically in the area of cryptocurrency in related companies?

A Yes. I have been involved in a number of other crypto related situations including several capital raises for bitcoin minors and other crypto companies; not specifically focused on bitcoin, but other cryptocurrencies and other business models as well, including IPO advisory and liability management, both representing the company as well as representing creditor groups.

MR. GLUECKSTEIN: Thank you.

No further questions, Your Honor.

THE COURT: Thank you.

Thank you, sir. You may step down.

THE WITNESS: Thank you.

(Witness excused)

THE COURT: Any further evidence, Mr. Glueckstein?

MR. GLUECKSTEIN: No, Your Honor. We are prepared to move to argument.

THE COURT: Let me ask if the other objecting parties have any evidence they wish to introduce.

MR. FINGER: No, Your Honor.

MS. SARKESSIAN: No, Your Honor.

THE COURT: Thank you. Go ahead.

MR. GLUECKSTEIN: Thank you, Your Honor. Again, Brian Glueckstein for the debtors.

Your Honor, with respect to this motion most, but not all, as we have just heard, of the relief requested in the motion to protect the debtor's customer list and their creditors and to streamline disclosures is uncontested this morning. The purpose of the debtor's request to redact sensitive personal information of customers and other stakeholders is to protect the value to the debtor's customer list as an asset and to protect sensitive personal identifying information of creditors.

There is no objection to redacting the addresses of individual customers and other individual creditors. That

information, subject to the Court's approval today, would remain redacted.

The U.S. Trustee and the media objectors do object to the debtor's redacting customer and creditor names. And with respect to the U.S. Trustee's objection the addresses of non-individuals.

The objectors cite the general principals of the right to public access to records and bankruptcy disclosure requirements. They do not articulate any specific harm being suffered that requires disclosure today of the names and institutional addresses on an immediate basis. Nor do the objectors recognize, in our view, the Court's role in modifying those requirements for cause shown.

Your Honor, the debtors have been working hard to strike the correct balance on this difficult issue particularly in the still early stages of these Chapter 11 cases to ensure the protection of their assets and customer information, but understanding the need for disclosure and transparency.

Your Honor, these Chapter 11 cases, as we have been hearing from when we first stood in front of you, are unprecedented. The debtors recognize that they have generated significant public interest. These cases also present unprecedented challenges, but the relief requested, including the redaction of customer names, has precedent in

this Court.

In Your Honor's well-reasoned opinion in Cred where redaction of both names and identifying information of a crypto currency platform's customers was permitted. The Court's reasoning applies here, but we submit the facts and the evidence before the Court here are overwhelming against immediate disclosure given the debtor's customer lists have more than 9 million names and addresses on them.

The U.S. Trustee invites the Court to rip-up precedent in this district and instead to simply adopt the conclusions reached in the Celsius case by Judge Glenn in New York. We submit, Your Honor, that decision is an outlier and certainly should not be wholesale adopted here, and it doesn't need to be.

In order to strike an appropriate balance as to the disclosure while providing the debtors and other parties more time to evaluate options and ensure all restructuring options for the debtor's assets, the debtors and their assets remain available. We are limiting our request today, as reflected in our reply papers, with the support of the creditors committee, to the redaction of names in the debtors -- of the debtor's customers and addresses of institutional customers for an additional six months subject to the right to request further extensions of the redaction authority.

These redactions are appropriate and necessary to

protect the debtor's commercial information pursuant to Section 107(b) of the Bankruptcy Code. Section 107(b), as the Court is aware, of course, permits the Court to protect for cause the debtor's confidential information.

Mr. Cofsky's testimony before the Court makes clear that the debtor's customer list, in his opinion as the debtor's proposed investment banker charged with maximizing the value of assets in such a process, including both names and contact information are a key asset and a source of value, potential source of value, at a minimum, for the debtors.

Mr. Cofsky's testimony this morning explained the companies that operate crypto asset management platforms work to identify new customers, attract, and enroll them, and establish them as customers. Mr. Cofsky concluded that the debtors would be harmed by the disclosure of customer names even with the redaction of addresses.

We heard on cross-examination questions about exactly how hard it would be, and is it easier or harder with the middle initial to identify these customers and contact them. We would submit, Your Honor, that the level -- the question before the Court today is not whether every one of the debtor's customers could be or even would be immediately contacted by competitors.

Mr. Cofsky's testimony and the positon of the

debtors is that we believe there is significant evidence that that is likely to happen, at least with respect to significant customers, with respect to customers that are not known, as Mr. Cofsky testified this morning, in his view are not widely known to be customers in the crypto currency and digital asset space.

We would submit, Your Honor, that the conclusion of the debtor's proposed investment banker is highly probative of the limited question that is before the Court. The Court's conclusion in Cred overruled a similar objection from the U.S. Trustee on similar grounds. The Court concluded there that the debtor's customer list had some "intrinsic value." We believe here that is clear. Where we're talking about more than 9 million customers compared to the 6,500 or so that were at issue in Cred.

Importantly, as I noted, while the case to keep customer names and -- customer names confidential is, in our view, compelling the debtors are seeking this relief today only for a limited period of six months with the right to reserve to seek extensions.

Your Honor, I also want to briefly address the U.S. Trustee's arguments that granting this relief for any period of additional time would somehow hinder the administration of these cases? We believe that is not true at all. All of the necessary information, Your Honor, is

being served, will continue to be served, and provided to parties in interest as required. The debtors have worked when other parties have needed to serve documents to take on that responsibility and to serve documents on the debtor's creditor list where that, as I say, is necessary.

As in the interim order the proposed final order that we submitted includes the Court's language that was developed in Cred making clear that all parties in interest retain the right to seek copies of any redacted documents from the debtors or, if necessary, from the Court.

Your Honor, importantly, we believe that this balance is appropriate for today. If the redactions are granted on this basis to preserve the debtor's assets, to allow the strategic review process that is discussed, that's at issue -- I'm sorry, before the Court in connection with the bidding procedures today, the discussions that are underway that Mr. Dietderich referred to in his opening remarks, to allow all of that work to continue, and to mature, to hopefully a plan or sale process that benefits all stakeholders.

We're asking for the limited relief to maintain that customer list in confidence for a period of six months. If redactions are granted today on that basis the debtors are not asking the Court, and we submit the Court doesn't need to reach the issue at this time, of the propriety of redacting

customer names more permanently on the basis of Section 107(c)(1). We reserve the rights on that issue, of course, ands to come back to the Court, but we don't believe that that issue needs to be adjudicated and we understand that that question presents some difficult issues for not only the Court, but for the debtors and other parties in interest.

Lastly, Your Honor, the debtors do request that the Court authorize the redaction of individual non-customer creditor and equity holder names to comply with the GDPR. It's briefed in our papers. That relief has historically, from what we see, been relatively routinely granted by Court's in this district. The U.S. Trustee did not object to that relief with respect to the interim order, but has objected to it on a final basis.

We believe that the U.S. Trustee is taking that position which seems to be a significant departure based on the Courts' reasoning in Celsius. We submit, Your Honor, that that position is somewhat short-sided. Citizens of the covered countries have a heightened expectation of privacy as a result of local law. And as detailed in our reply papers we do not believe there is a basis for the Court to conclude that the GDPR does not apply to the debtors, and regardless there is really no need to subject the debtors to potential fines for violations which would only harm all stakeholders.

So with that additional relatively modest piece we

are limiting the relief today to the question around maintaining the redactions with respect to the debtor's customer list in its entirety including names and addresses of institutional customers for a period of six months for entry to the order with all parties rights reserved.

Thank you.

THE COURT: Let me ask you a couple questions. Does it matter that the customers here are not the exclusive customers of the debtors?

MR. GLUECKSTEIN: I don't think so, Your Honor, because from our perspective, of course, there are customers that probably, and I assume with 9 million if these are people active in crypto, have investments on different platforms. And to the extent that those customers are accessible through other sources, of course, they can be contacted.

The question though before the Court, and that Mr. Cofsky was testifying about this morning, is whether or not we should put on the docket of this Court, effectively, 9 million names that allow the debtor's competitors and potential acquirers of the debtor's assets and businesses giving them the roadmap to say these are the folks, here are the significant customers, they seek claim entitlement amounts, let me try to contact those people.

So it's not a question of exclusivity, it's a

question of exclusivity with respect to the list that the debtors have complied over time, you know, spending its own resources to put this together, whether that asset should be preserved. We submit that it is, that it should.

THE COURT: Why six months? What is the significance of asking for six months?

MR. GLUECKSTEIN: There isn't a significance, Your Honor, other then, I would say, a couple of things.

First, we want to try to be reasonable here and take this incrementally. We are not -- based on this we're not asking for a permanent authority to redact on the basis of preservation of the assets, again, with rights on 107(c) reserved.

We looked at how long we think it will take to move forward with a process to make, at least, a determination as to whether the customer lists are part of a sale process, are integral to a reorganization plan. Are we going to be standing here in six months and be able to -- can I say definitively that in six months all of these issues will be worked through? I can't, but we think it's a reasonable period of time where our thinking will be substantially advanced from where it is today. Is there a magic to six versus eight or five, no, but we thought it was a reasonable period of time.

The other piece, Your Honor, there are some

complications. We know. We discussed them at the first day hearing with Your Honor around claims. You know, once we set a bar date and how the claims reconciliation process is effected by these redactions. Those are issues we are still working through.

We don't believe, for a number of reasons, including because of the SOFAs and schedules extension that is before Your Honor today that we are going to be in a position to set an early bar date in this case so that the six month period factors into that to. We don't think we're going to be up against having to address some of the issues that we discussed back in November around what happens after we filed a bar date and all those claims remain.

THE COURT: Well the bid procedure motion that you have on that's for purposes of seeking to sell -- I think Mr. Cofsky actually testified that the entities that are sought to be sold pursuant to those procedures are exchanges, correct?

MR. GLUECKSTEIN: They are.

THE COURT: So -- and that -- what is the -- remind me the proposed timeline for the sale of those assets or, at least, the bidding is supposedly done by the end of the month, right?

MR. GLUECKSTEIN: I believe its -- I believe the process in the bid procedures as contemplated -- I will refer

to Mr. Dietderich on the schedule.

MR. DIETDERICH: Your Honor, Andrew Dietderich, Sullivan & Cromwell.

It's a staggered schedule for the different businesses, but it will take a couple of months, at least, to get done.

THE COURT: Okay. And by then we will have some understanding, at least from that process, as to whether or not the creditor lists are going to be important to potential purchasers.

MR. GLUECKSTEIN: We will have some indication, Your Honor. As Mr. Cofsky testified this morning the main -- what I would call the main exchanges, right, so FTX.com, FTX US, the main exchanges are not subject to the current process. We will be informed by the localized exchange in Japan, for example, as to the relevance there, but I think Mr. Cofsky testified this morning that the process for the main exchanges will take longer because that process is not yet formally underway as far as bidding procedures. There are lots of discussions that are ongoing.

I do think it is a good observation. We are going to start to be able to be informed by the different data points. The work that the professionals are doing, the strategic review that is underway, and the sale process of these other exchanges to have an understanding as to the

customer list.

So for all those reasons, Your Honor, we developed six months as a proposal because we thought it was a very reasonable next step.

THE COURT: Thank you.

MR. DIETDERICH: Your Honor, may I give you -- sorry to speak out of order, but Mr. Dietderich again. May I give you the actual proposed dates; now these are the earliest possible sale hearing dates for the various businesses, but they range from February 27th to March 27th.

The other point that may be factually relevant for your consideration is we did, in the cooperation agreement with the JPL in the Bahamas, commit to them that we would work during a six month period on our project to consider a potential reorganization of the international platform. And this customer information and data would, of course, be important in connection with that work with them.

THE COURT: Thank you.

Anything further?

MR. GLUECKSTEIN: No. Absent any other questions from Your Honor I will cede the podium.

THE COURT: Mr. Hansen.

MR. HANSEN: Good morning, Your Honor. Kris Hansen with Paul Hastings, proposed counsel for the official committee once again, Your Honor.

So, Your Honor, the official committee joins in the debtor's arguments. We filed a joinder to that effect on the docket as well. I wanted to add a couple of points for the Court with respect to this issue.

Regarding the six months we collaborated on that. We talked about how you create value associated with the assets that the debtors are thinking about selling or reorganizing. And as you heard from Mr. Cofsky's testimony, there is inherent value within the customer list associated with these businesses. And as the Court is, obviously, well aware in connection with non-crypto businesses sometimes parties will pay for customer list alone, sometimes the customer list goes with those assets.

So the purchase and sale of customer information is a vital component of any type of a retail oriented entity and business. And, obviously, from an exchange perspective there were an awful lot of retail investors here. And so there is inherent value within those lists. I think that is uncontroverted. I think everyone here agrees with that.

So in balancing that we looked at it and said we've got two major tasks here. One is to assess the value associated with these assets from a sale perspective. Two is to assess the value associated with these assets from a potential "reboot" is how we've been referring to it on our side.

The reboot is complicated. There are global regulatory issues associated with rebooting the exchanges. Everywhere that the exchanges operate there are regulatory requirements that have to be met including the United States and globally. So it takes time to think through how that works. So it can't just simply be restarted in its existing or prior form because there were issues associated with it which, in some ways, we're here dealing with.

So it's a complicated exercise among many professionals on all sides to be able to figure out exactly what the steps are that are necessary to be able to think about the reboot, but that reboot may unlock incredible value for creditors and customers in connection with these cases because it may open the ability to have something that is a going concern, that could be sold, or could be distributed from an equitization standpoint in connection with a more fundamental plan of reorganization.

Then, obviously, with respect to the sales you have the four assets that the debtor is seeking to sell at the moment. We have more to say about that later when we come to the bidding procedures, but with respect to Embed, LedgerX, FTX Europe, and FTX Japan, as Your Honor noted, two of them are -- so LedgerX and Embed are non-debtors and those are currently operating.

So the customers of those entities and the

information associated with those entities, to the extent that they overlap with the information that debtor is seeking to protect here those are ongoing businesses which are interacting every day. There could be damage done to the value of those businesses by disclosure of those customers.

Similarly with respect to FTX Europe and FTX Japan, from the committee's perspective, we're just rolling up our sleeves. We are trying to understand what it is that is being sold here and what the value is. And tracking back to Mr. Cofsky's testimony and the point I made a moment ago there is inherent value in the customer list. And so when we look at it and say if that information was disclosed today without the opportunity to do more diligence to determine the inherent value in them that could do damage and it could seriously reduce the amount of distributable assets to creditors in connection with the cases. That would be a bad thing.

From our perspective, Your Honor, in a situation where there has been a global fraud and no one yet knows what the recoveries in these cases are going to be we need to make sure that we preserve the assets as best as we possibly can. We understand the competing interests that the media and the United States Trustee have noted with respect to transparency, but we just don't believe that there is a true interest in the media for in the broader universe of parties

-- potential party's interest in the cases of understanding who the customers were.

You have to think about like what is the purpose behind that versus the very clear and articulated purpose of trying to preserve value. So when we come back to that six month window and we ourselves, on the committee side, with our professionals have said it's going to take a significant period of time to really understand the reboot and really understand the asset sales.

To Your Honor's point, the earliest dates, which we think are too early, come up on February 27th and March 27th with respect to the assets that are currently being sold. We will get a better look at the real interest of parties associated with the customer lists within that window, but we probably won't have the (indiscernible) because we think those are coming on too quickly.

So, again, Your Honor, and I would echo Mr. Glueckstein's point with respect to 107(c). 107(c) we do believe that -- and at a further hearing we can get into with the Court, to the extent that the Court wants us to, that there are real risks to customers in connection with the disclosure of identities. There are news stories and information that demonstrates that there have been kidnappings, there have been thefts, there have been other types of violent acts committed against people within the

crypto community and that is a very real risk and a very real concern.

With respect to the information that we're talking about today and the reason to protect it under 107(b) it's absolutely crystal clear that this is commercial information of the debtors and that it has value, and that there is a very clear case to be made that Your Honor can protect that information for the temporal period that we've asked under 107(b). We reserve rights on 107(c) and if the Court would like further briefing on that and testimony on that we can do that, but we think you have enough of a record to cover it from a 107(b) perspective today.

So, Your Honor, if you had questions for me I would be happy to answer them.

THE COURT: No, no questions. Thank you.

MR. HANSEN: Thank you.

THE COURT: Could we turn up the microphones on the stand. It's as high as it will go. Everybody has got to keep your voices up. I mean I can barely hear some of it and I'm sure the people in the back probably can't hear it very well.

Anyone else want to speak in support before we go to the objectors?

(No verbal response)

MR. HARVEY: Excuse me, Your Honor, and may I

please the Court Matthew Harvey from Morris, Nichols, Arsht & Tunnell on behalf of an ad hoc committee of non-US customers of FTX.com.

We filed a joinder in this motion of the debtors, Your Honor. We support the debtors in their efforts to seal this. I think from the customer's perspective they have the 107(c) issue which is not going forward today in terms of their own interest and protecting their own information, but also the debtors and the committee have identified, I think rightly, the customer list and the potential value in either a sale or restart of the platform as an avenue for recovery for members of our ad hoc

We do think it's important, particularly for the preliminary matter, the debtors have requested for six months to protect this information to allow the process to play out and allow the debtors to determine the best path forward with this customer list.

THE COURT: Thank you.

MR. HARVEY: Thank you, Your Honor.

THE COURT: Ms. Sarkessian.

MS. SARKESSIAN: Your Honor, would it be possible to have a five minute break?

THE COURT: Certainly. Well let's make it -- let's make it 10 minutes just so everybody has -- well we got a lot of people here, let's make it 15 minutes so everybody

has time to use the facilities.

So we will recess for 15 minutes.

MS. SARKESSIAN: Thank you.

(Recess taken at 10:39 a.m.)

(Proceedings resumed at 10:58 a.m.)

THE COURTROOM DEPUTY: All rise.

THE COURT: Please be seated.

Ms. Sarkessian.

MS. SARKESSIAN: Your Honor, Mr. Finger asked if he could go first.

THE COURT: Okay.

MR. FINGER: Your Honor, at the outset of my comments I move to strike the debtors reply because it introducing new material which should have been included in his opening brief, and has been raised for the first time. For example, Paragraph 17 debtors invoke Japanese law. Two laws, the acclimate protection of personal information and the Financial Instruments and Exchange Act. They should be waived; however, because they have raised them to protect my client.

The first one, the APPI Section 17(3) allows the use of such information when doing so is necessary to cooperate with a "national government organ" of a foreign company. Now there can be a debate back and forth as to what that means. Usually when Courts deal with foreign nation's

law expert testimony is required.

The point here is that --

THE COURT: Not always.

MR. FINGER: Not always. I --

THE COURT: I can look it up in Martindale-Hubbell and that is sufficient.

MR. FINGER: I don't -- I never mean to -- but there has been nothing provided to this Court showing that this article section does not apply. And as for the Financial Instruments and Exchange Act that law applies to securities trading. Most crypto is not deemed a security and so it's outside FIEA's jurisdiction. Some tokens are, but debtors have not established that their crypto falls within the jurisdiction of the FIEA.

Similarly, for the same reasons --

THE COURT: Well this isn't just their crypto, right?

MR. FINGER: I understand. Yes, Your Honor. The crypto involved -- I will make a -- crypto involved in this matter.

THE COURT: It doesn't mean the debtors in this case have more than just their own crypto on the exchange. They were in exchange for all types of crypto, right.

MR. FINGER: But the point being that if it is not -- if the crypto involved, be it their own or their

customers, is not within that limited categories then it is outside the jurisdiction of FTI. This is a red herring.

For similar reasons, Your Honor, we want to strike the testimony of Mr. Cofsky. His testimony -- first, his affidavit was provided three days ago with no real opportunity to test it. Not even in this Court we've had no opportunity to depose Mr. Cofsky or his staff who worked on this thing. His testimony was very general. They looked through social media, they picked certain names. We had no opportunity to test that. They were obligated to provide this information in their opening motion.

But now let's turn to the justifications given for sealing.

THE COURT: Just to close the loop on this, Mr. Finger, I will deny both of those motions.

MR. FINGER: All right. Thank you, Your Honor.

The justification for sealing, they claim the risk of identity theft and cyber scams. Think about all of the creditor's lists that have been publicly identified in bankruptcies over the decades. Let's just even limit it to when Pacer came along. With all of that there is absolutely no evidence presented to this Court that there are any identity theft or scams occurred as a result of those creditor lists being made public. It's no counter to say this case is different because it involves crypto currency.

THE COURT: I think they're not pursuing the 107(c) basis for sealing the customer list at this point.

MR. FINGER: Not the customer list, but this is also a list of creditors.

THE COURT: Well I guess there's a question, are they creditors, or are they customers, or are they both. It could be both, but I don't know. At this point in the case I don't know.

MR. FINGER: The fact that that is not established -- well, never mind I will withdraw that.

The fact is identity thieves don't care what the nature of the business is, they just want names to use.

Your Honor heard some testimony about commonality of names. In fact, Your Honor, I did an experiment last night through a website called TruthFinder.com. I put in Your Honor's name and came back with 58 people who share your name; 57, I'm sorry. Now, in candor, that lists the differentiation because it included middle names and middle initials.

We have no objection to redaction of middle names or middle initials, but there is nothing before the Court that tells the Court how many of the names that have been on the list do not have multiple people with those names. Its, I think, a stretch to say, well, if we're able to go through five or six people of the same name and we come up with them.

Even Mr. Cofsky testified that it becomes harder if it's a common name. To extrapolate from that is harder when there are numerous people sharing the same name, but that is shooting in the dark and that is not enough of a threat.

Of course, using identity theft as a justification for sealing leads to the conclusion that all creditors or customer lists in every bankruptcy can be sealed to protect the creditors. Your Honor will be creating a per say rule. Debtors have not provided any polling of a random sampling of their customers to assess their fears of disclosure for cyber bullying or cyber scamming and identity theft. None of the debtor's customers here is claiming concerns.

THE COURT: I think you had one ad hoc group that came forward and was supportive of the debtors.

MR. FINGER: The ad hoc group, as I understand it, were claiming their concern is not under cyber scamming, but as to their rights under foreign law to confidentiality.

Turning to the poaching and reducing the commercial value of the list, again, this goes back to how common the names are, and there's been no effort to try to segregate; it's the baby in the bath water. William Smith, Maria Garcia, James Johnson, Daniel Brown, Thomas Miller. Again, the Google search said that these are examples of common names of the most common name combination in the United States.

So the potential for poaching, I respectfully submit, is not enough. Its high evidentiary standard they have to meet and the fact we provided cases to Your Honor -- in responses to Your Honor which says that. A statement that something could happen and in the absence of evidence showing it is likely to happen or will happen does not satisfy the first amendment evidentiary standard.

As for the GDPR I would draw the Court's attention to a case In Re Avandia Marketing Sales Practices & Products Liability, it's an Eastern District of Pennsylvania case in 2020, 484 F. Supp 2d, 249. The Court ruled that applying principles of comity, denial of public access based upon a foreign law would be contrary or prejudicial to the interests of the United States, but even apart from that Section 49.1 of the GDPR says there is an exception to the requirements of that law for "the establishment, exercise or defense of legal claims." Defendants have not even mentioned this, but certainly not have established that the exception is (indiscernible).

Debtors argue at Paragraph 3 of their reply that the objectors did not articulate any bonafides reason for disclosure at this time; however, this confuses the burden. Judicial documents are presumptively public and the public is entitled to see them as soon as their filed and they become part of the judicial record. The purpose of public access is

to ensure public confidence in our Courts and their rulings. The burden is on the debtor to explain why sealing is appropriate and not vice versa.

We also believe it's inappropriate to ask for a six month stay or delay with no assurances -- certainly no assurances that that will be the end of it, but even in the event that there are assurances I quote from the Supreme Court case Elrod v. Burns:

"The loss of first amendment freedoms, even for minimal periods of time, unquestionably constitutes irreparable injury."

Public access is derived from the first amendment as does Section 107.

Paragraph 16 of their reply debtors reiterate that the customers are identified the value of the business "could be materially harmed, diminished or disputed." As I mentioned earlier, we cited cases in our brief which they did not respond to in their reply, our brief in the opposition stating that speculating as to what could happen as opposed to showing with evidence what will happen is insufficient to meet their evidentiary burden. There is a case out of California we cited in our brief, but also the Celsius case out of New York states the same thing.

As to the In Re Cred case I was not involved, Your Honor was. I will not presume to imagine Your Honor's

considerations in that case. But an objective reading of Your Honor's opinion seems to think that the Court was not necessarily focusing on evidentiary requirements or the argument that there was no evidence supporting sealing. Since then the Celsius case has come out and while if another Court and is not binding on Your Honor, Your Honor is free to consider it as persuasive precedent in reassessing the Cred case.

At Paragraph 28 of their reply the debtors cite to a number of cases where this Court has allowed redacting names pursuant to GDPR; however, defendants fail to point out that with the exception of the last one of those cases listed those motions were granted as unopposed which there was no opposition. And unopposed -- orders based on unopposed motions have no precedential value.

The last one was proposed by the trustee and there was no new analysis in it. So it lacked persuasive force.

So in sum there is no competent evidence that any of the evils asserted by the debtors, identity theft, devaluation of the customer list by poaching, violations of international law, present a genuine or substantial risk. All the debtors have presented to the Court are speculation unsupported by competent evidence; however, to the extent that redaction is required it must be limited, as limited as possible, to meet the goals.

Redacting the addresses allows this and I throw in redacting middle names and initials. This is sufficient and if the Court is inclined to redact that should be the limit of it.

Unless Your Honor has any questions I yield the podium.

THE COURT: Thank you, Mr. Finger.

MS. SARKESSIAN: Thank you, Your Honor. Again, for the record, Juliet Sarkessian on behalf of the U.S. Trustee.

Your Honor, the bankruptcy process operates like the rest of the Court system on the bedrock principle of American jurisprudence that the public has a right to access of judicial records and only under very limited circumstances may a Federal Court restrict of deny that access. Here, the debtors are seeking a very wholesale redaction of a lot of information on any papers to be filed. That is what they say, any papers to be filed in this Court or may, otherwise, made publicly available in the Chapter 11 cases.

They are looking to redact names, addresses, email addresses of all customers whether they be individuals or entities, the names, addresses and email addresses of all non-customer individual creditors or equity holders if they are citizens of the UK or member nations of the EU, and maybe now Japan. I am not quite clear about that. And then also

the addresses and email addresses of all other creditor or equity holders who are individuals regardless of their citizenship. Of course, the U.S. Trustee has said we do not object to the redaction of addresses residential or any addresses with respect to individuals; whether they be citizens of the EU, the United States, or anywhere else.

Now the debtor's counsel started out stating that bankruptcy is a fishbowl. We have heard this many times. And, in fact, that the debtors welcome that. The committee said the cases need to be transparent. We agree with that; however, that is not what has happened in this case.

In the interim order entered on this motion the debtors -- excuse me, the Court allowed the debtors to file a creditor matrix under seal with a redacted version then to be filed. It's been two months. There is no creditor matrix on file, not under seal, not redacted, nothing. I double checked last night, I sent an inquiry to debtor's counsel to make sure I had not missed it, it's my understanding, and they can correct me if I'm wrong, that is still not on file.

So we don't know who any of the creditors are in this case, be it customers or anybody else. We don't know who the top 50 creditors are because that was all redacted. We don't have any monthly operating reports. The first ones were due December the 21st. I don't know when we're going to see any monthly -- actual monthly operating reports. The

debtors have proposed to file some type of aggregated report of some kind that is not a monthly operating report and then later at some point in time, we don't know when, they will start filing proper monthly operating reports.

We don't have schedules, we don't have statement of financial affairs, we don't have Rule 2015.3 reports. Yes, we have now come to an agreement about when those are going to be filed, but the majority of them will not be filed until March the 15th. The debtors have reserved the right to ask for further extensions.

So we have very little information here. This is the opposite of a fishbowl. And redacting customer and other creditor information to the extent that the debtors are seeking is only going to add to that lack of transparency. And here what we are talking about is we're talking about redaction as very essential documents that are part of the bankruptcy case; the creditor matrix, the schedules, the statement of financial affairs, professional disclosures they have been redacted as well to the extent that there was a reference to a customer name or an individual creditor. Those were redacted.

So these are all really critical documents that are part of the bankruptcy process. And there needs to be -- the case law says, that we have cited, there needs to be a showing of extraordinary circumstances and compelling need

for these types of redactions, before any type of redactions, but especially on such fundamental documents that are part of the core of the bankruptcy case.

Here the debtor has really nothing more than some vague statements, and I will get it into, in a minute, Mr. Cofsky's testimony, but very, very limited testimony or evidence about something that requires a showing of extraordinary circumstances. We do not believe they have met their burden and it is the debtor's burden here to establish that the information can be sealed under either 107(b) or 107(c).

If Your Honor could bear with me for a moment, please.

So 107(b)(1) talks about confidential commercial information. Now the debtors and the committee keep referring to a customer list. It's not a customer list, it's a list of creditors. It's the creditor matrix, it's the list of creditors in the schedules, in a professional disclosure, and it's a reference to somebody who is a creditor. They may also be a customer, but we're not talking about a separate document that is a customer list.

I suppose what the debtors would say was, well, we have so many customers who were creditors that if you looked at the creditor matrix, whenever it may be filed, that one could assume that most of those people are customers and not

other kinds of creditors. There is not going to be any distinction, there is not going to be like a separate section that these are customer creditors and these are other creditors. It's a creditor matrix. Same thing with the schedules, there is no distinction -- I mean there is a distinction based on priority if it's a general unsecured claim, but there is not a distinction between creditor customers and creditors who are some other kind of creditor.

With respect to -- even assuming that the debtors would be correct in making that argument that competitors will just assume that everybody on that list is as customer, Your Honor made the point that many of these customers may not be exclusive customers, they may already dealing with competitors.

With respect to -- I think the point is very important in terms of poaching. Again, all we are talking about for individuals are their names and no other information. Yes, for institutional or non-individual creditors the U.S. Trustee believes that it is appropriate to include their addresses as well as their names, but for the individuals it would just be their names.

Mr. Cofsky's testimony that, well, just a name alone, just a customer name alone would give you an ability to find information to contact them. That was based on not even any work he personally did. He had a staff look at less

than 20 names on the -- out of the 9 million names less than 20, there was no methodology that was explained as to how they picked the names, although he indicated -- I believe he indicated they looked for names that were not extremely common; although, again, I would make the point that there are names that might be uncommon in the US, that look uncommon to us because we're not familiar with them, that might be very common in other parts of the world. I am always surprised I see names and I think, oh, that is an unusual name and then find out, oh, that's actually very common in Japan, China, or whatever the country might be.

So we don't have any methodology. There was less than 20, that's nothing. And out of the less than 20 he said, well, more than 50 percent we could get information on. So it wasn't even out of the 20 or less then 20, you know, we were able to get information on all of them. That's a very, very slender thread, based on hearsay evidence, but even if it wasn't, a very slender thread to say, all right, because of less than 20, 50 percent of those, you were able to find some contact information, whether that's the same person or not, who knows, but potentially, it could be the same customer. That's a very, very slender thread to say, therefore, you may redact all customer names from every single document that's going to be filed in the case.

Now, let's talk for a moment about this six-month

restriction. Six months is a really long time in the bankruptcy world; as Your Honor is aware, a lot happens. In this case, during these six months, we are hopefully, going to have schedules and statements filed. This information is relevant to that. Sales will be taking place. Hopefully, a creditors matrix will be filed at some point. A lot happens in six months.

And then, of course, at six months, they're going to come back and they may still ask for another extension. But even if it's only six months, that information is important information to be out there, and, again, we're going to be getting schedules and statements that have so much redacted, they're probably going to be next to worthless for anybody who doesn't see the unredacted version.

And, Your Honor, I would also like to make the point that I was trying, very ineffectively, to make with Mr. Cofsky. This is not a situation where you're coming in, where the customers of the debtor, you know, are likely to be happy with the situation. Well, maybe that's true in all bankruptcy cases, but you have a very extraordinary situation here. You have a situation where the customer accounts were frozen prior to the bankruptcy filing and have been frozen since then. These customers, the online customers cannot get access to cash, coin, whatever might be in those accounts. No access.

At the same time, they learned that there were allegations of a massive fraud, that customer accounts were raided and the funds were transferred to Alameda in the amount of $10 billion of customer funds. So, it's probably reasonable to think that these individuals, these customers with all of this happening, if they're going to other platforms. Well, they can't have access to their funds yet, but when the time comes when they have access to their accounts, they may be looking for competitors or they may be looking to transfer this to traditional banks.

So, you know, it's not a situation where you have a customer base that might be relatively happy, the debtor files for bankruptcy, and now you're worried, you know, they would be happy, but now you have competitors coming and poaching them. I would say, you know, I think it's reasonable to assume that these customers, many of them, are very unhappy with the current situation and are probably, you know, very well may, on their own, be looking to transfer when they can or maybe, like, I would say ripe for the poaching if any competitor came along. So, I think the situation is different than other types of cases.

Then I want to talk a minute about the 107(c) argument. So, if I understand correctly, the debtors are now saying that they want to hold off that argument until another time. Their motion made an argument under 107(c). They

cited that statute. We responded. Our objection was filed on December the 12th. They've had, virtually, a month. They've had plenty of time. The Committee addressed it.

I don't understand this. Like, if they had any evidence to put on that point, today was the day to put on the evidence and there was no evidence that in name alone, could subject an individual to any type of harm, be it by -- I don't know if it was the Ad Hoc Committee's counsel, somebody talked about kidnapping with a name. We don't even know what country these people live in. There's no evidence of that. There's no evidence of identity theft, based upon a name and nothing else. There's no evidence presented that a customer's accounts could be hacked with just a name. No evidence on that. Or that the person's safety could be compromised.

And the Ad Hoc Committee, of course, cited to Your Honor's ruling in Cred, also cited to Judge Owens' ruling in Clover, and they attached the transcript. Clover had to do with residential addresses, not, you know, names. Not names alone. I think there were 10 members of the European Union in there and there wasn't much discussion of that, but apart from those 10, they were talking about residential addresses; again, we are not objecting to that.

And, frankly, Your Honor, if you get to the point where you are redacting individual creditor's names, not the

addresses, but their names, as well, with the idea that, otherwise, there could be identity theft, the amount of sealed filings in this court would be enormous, I mean, every single, including Chapter 7 and Chapter 13 cases. Debtor's name, the individual creditors, all those -- proofs of claim filed by individual creditors, is all of this going to be filed under seal? It's not a workable -- it's not workable and there's nothing under 107(c) that would support redacting names based on the idea that, otherwise, there could be identity theft. But, again, there's been no evidence and if there was, this was the day to put on the evidence on that point.

So, to recite an issue on the burden of proof, we cited the Third Circuit case, Cendant Corp., that the debtors have the burden of proof on 107(b), as well as 107(c). And under 107(b), again, the debtors must establish and demonstrate an extraordinary circumstance and compelling need to obtain protection. That's from Food Management, which I believe is actually from the Southern District.

I'll also mention that, you know, in Mr. Mosley's declaration, which came -- that was filed in support of the initial motion, he used the term, he said public dissemination of customer lists could give the debtors' competitors unfair advantage. He didn't say, "would"; he said, "could." So, that's a very low level of argument to

meet an extraordinary-circumstances test.

So, let's speak a little bit about foreign law. First of all, as we stated in our objection, we're in a United States Federal Court. United States federal law controls over foreign law. We cited a Supreme Court case on that point. Not in this exact connection, but with regard to a French blocking statute. But beyond that, as Mr. Finger made the point, and we made the point in our objection, that this does fall within the exception of the GDPR because this is a legal proceeding and there's a legal claims exception for that.

Now, the debtors, in their reply -- in their initial motion, the debtors' discussion of the GDPR was in one paragraph, paragraph 20. It references the GDPR. It doesn't even provide a citation as to where to find it. It doesn't quote from it. It says the GDPR may apply to the debtors -- may -- and it doesn't even say what it is that the GDPR protects, other than it says home addresses of individuals, which again, not an issue -- we're not objecting to that. So, obviously, we spent a lot of our objection going into the details of the GDPR.

But I want to look at in the reply, the debtors did make two arguments, with respect to the GDPR, that I would like to address. So, the first one, in paragraph 25 of their reply, the debtors argue that while the U.S. Trustee

notes that processing of personal data is lawful if it is, "necessary for compliance with the legal obligation to which the controller is subject," the U.S. Trustee ignores that any such legal obligation, "should have a basis in union or member-state law," not in U.S. law. And they cite Article 40 -- excuse me -- Recital 45 of the GDPR.

Recital 45 of the GDPR says, for the debtors to process information, meaning, to collect information, code it, transform it to a usable format, the processing has to be legal under the laws of the EU or its individual member states. The recital does not say anything about compliance with laws outside of the EU.

And Recital 45 is not relevant to what we're talking about. It's a different issue. It's not talking about an exception for when this information can be disclosed; it's talking about the way in which the information is processed. It must be processed under the law of the applicable EU state.

The second argument that the debtors make in paragraph 26 of their reply says that the U.S. Trustee is conflating transferring of information with processing of information. They -- so, they -- I believe the argument is that the exception in Article 45 [sic] that allows the disclosure in connection with legal proceedings, applies only to the transfer of personal data, not the processing of

personal data, and that what the -- that the disclosure would be processing, not transferring.

There's no authority cited for this position. We -- you know, I can't say that I can cite any authority for the contrary position, but they cite no authority to say that there's some distinction here and that or the exception in Article 49 [sic] only applies to processing and not actually disclosing in connection with a legal proceeding.

With respect to Japanese law, I mean, that was not raised. It was not mentioned that their motion. We saw it for the first time, Sunday at 4:00 p.m. I have not been able to reach an expert in Japanese law since Sunday. There was not any official translation of these Japanese statutes that were provided. They do not -- the debtor does not quote the operative provisions. There's obviously no expert witnesses to testify about Japanese law. They just put in their reply, This law -- these two statutes apply and these statutes do not have any exception for legal proceedings.

So, I, really, I am not in a position to say anything about Japanese law, other than the fact that this was something that was -- should have been brought up in the initial motion and that would have given us more time to respond to that.

So, Your Honor, another point I want to bring up that we mentioned in our objection that is significant is

that if you shall determines that to whatever degree Your Honor would grant the motion for file information under seal -- I'm sorry -- to whatever degree Your Honor would allow the debtors to redact information from the court filings, the unredacted versions of those documents must be filed under seal with the Court.

Now, the debtors in their reply said, Well, of course we'll do that, but the proposed order only states that the creditor matrix must be filed under seal. That was a compromise when we were discussing it at the interim stage.

The order, I would request, to the degree that anything is allowed to be redacted, that the order provide that the unredacted version must be filed with the Court. And I would also ask --

THE COURT: That's a requirement of the Local Rules, isn't it?

MS. SARKESSIAN: Yes, it is, Your Honor.

But I don't want anybody to say, Well, the order doesn't say it has to be done. The order only talks about redaction, it doesn't talk about sealing, and therefore, the order somehow trumps the rule.

So, I just want that to be clear that those filings will be made. And it would also be nice to know when the creditor matrix is going to be filed, both, in a -- if it is to be sealed, in a sealed version, and in a redacted

version, as well.

If Your Honor could just give me a moment to make sure that I've covered everything.

(Pause)

MS. SARKESSIAN: So, Your Honor, unless Your Honor has any questions for me, my argument is concluded.

THE COURT: Thank you.

MR. GLUECKSTEIN: Your Honor, for the record, Brian Glueckstein for the debtors. Just a couple points very briefly.

Just to take the last point first, the debtors, of course, will file any documents in this case that need to be filed under seal, under seal, according to the Local Rules and I will make that representation that Ms. Sarkessian has asked for. That's not an issue.

With respect to --

THE COURT: Of the creditor matrix, you mean?

MR. GLUECKSTEIN: With respect to the creditor matrix, Your Honor, the creditor -- we're conflating a couple of issues. As has been well-documented, and we have disclosed to the Court, there are significant issues with us filing the entirety of the customer list, from a timing perspective, access to data and information. The Court may recall we required additional time and we had to come up with a creative process to get our top-50 list done in order to

view information that we couldn't fully access in terms of the informational databases.

Those lists are on file in redacted form. The unredacted forms have been filed. We sealed the top-50 lists. Ms. Sarkessian and the U.S. Trustee's Office, of course, has them.

With respect to the timing of the full creditor matrix, that issue, Your Honor, you know, we're trying to, you know, we're trying to get kind of clarity on the timing. It's the volume of the nine-million-plus names and contact information, accessing the systems is taking time. We are working as hard as we can to get that on file and we will file that, if we're authorized to redact the information we've asked for today for the six-month period. That, of course, will be filed, the full nine-plus-million names under seal as soon as we're in a position to do so, which we hope is very soon.

What we will do, and what we can undertake to do, Your Honor, is file what we have now and what we've been using for service, file that, and then update it as we get the full nine-million-plus names into the matrix. So, we're happy to do that, Your Honor.

THE COURT: So, let me ask you this, you're not proposing that you would redact from filings? One of the things Ms. Sarkessian raises is that you want to redact not

just the creditor matrix or the customer lists, but also any reference to any customer or creditor in any other filing in the court. And I'm assuming you're not proposing to do that if that particular customer has already self-identified.

MR. GLUECKSTEIN: We have not, Your Honor, and that's another issue that Ms. Sarkessian raised, right, this idea that there are customers who want to go to competitors or want to move their accounts, which, of course, we understand. And they're not in the position, certainly, to take their account at FTX at this point because of the Chapter 11 process, but they're certainly free to go to a competitor, self-identify themselves to a competitor, and open an account somewhere else if they haven't already.

And, of course, we did as this issue some at the first day hearing, any creditor or customer is free to come forward and participate in this case, identify themselves publicly, identify themselves in the docket of this court. The documents -- and we have, of course, no issue with that and wouldn't seek to restrict that -- from the perspective of the documents that Ms. Sarkessian was reflecting -- was commenting on this morning, the creditor matrix, the top-50 list, the SOFAs, the schedules, these are all documents that we are required to file, right. Those are documents the debtors are required to compile and provide and would result in us affirmatively, with or without their consent, as part

of the bankruptcy process, and we understand there are obligations of the bankruptcy process, to identify the names of those customers.

Ms. Sarkessian referenced the idea, well, nobody would know. You have all these names. It's a creditor list. It's not a customer list.

Our top-50 list, even the redacted versions that are on file publicly, do delineate between customers and non-customer creditors -- trade creditors and customers. And so, that information, if it were to be unredacted today, people could see very easily of the top-50 creditors, which of those are customers, meaning customers who hold accounts on the various exchanges at FTX.

So, the distinction that Your Honor references, we agree with. Obviously, there's nothing in what Your Honor would be ordering that would prevent any party from self-identifying if they so choose.

THE COURT: So, is there a -- excuse me -- a way to delineate between -- you refer to the top-50 creditor list. That's been sealed in its entirety or redacted in its entirety, right?

MR. GLUECKSTEIN: It has not been redacted in its entirety, Your Honor. It has been filed in a redacted form that redacts the information that we asked, and that the Court authorized, pursuant to the interim order. So, we have

redacted names and addresses of individuals and of institutions who are customers, pursuant to the Court's interim order and it's reflected as such. But those documents are on file in redacted form under seal.

THE COURT: So, what I'm trying to get at is, is there a way to delineate on the creditor lists, between who is a creditor, who is a customer, and who is both, and be able to disclose those who are solely creditors, publicly, without disclosing those who are customers and creditors?

MR. GLUECKSTEIN: You know, it goes to the question, it's a question of what information for the full nine million, of whether that's a meaningful field that exists or that would have to be kind of independently reviewed and populated, and I'm not sure of the answer to that, Your Honor. We'd have to look into that.

I think the number, from a volume perspective, is very small, comparative -- in relative comparison to the customers. What we've been talking about here, by and large, and why we've been seeking to protect, when we talk about the customer list, the customers at the main debtors, at the exchanges, are where the volume is and that's where we believe the value is, and that's what Mr. Cofsky testified about this morning.

So, you know, that does implicate, of course, the 107(c) issues, which we are not pressing today. But I

think, you know, we would have to see -- honestly, Your Honor, we would have to see whether we could make that delineation for all, kind of non-customer creditors. I suspect that we could, but I think that would take some work, but I suspect that we could.

THE COURT: Well, in the top-50 lists --

MR. GLUECKSTEIN: Certainly, in the top-50 lists, we have that information.

THE COURT: -- are there those who now have been disclosed, who are solely creditors, not customers?

MR. GLUECKSTEIN: Not by name, Your Honor, because the interim order had the 107(c) relief in it.

THE COURT: Okay.

MR. GLUECKSTEIN: So, at this point, all of the names are redacted from that customer list that are subject to the interim order. So, the relief that we asked for in the interim order, because it did include the 107(c) relief, is broader than what we're talking about now.

THE COURT: Okay.

MR. GLUECKSTEIN: You know, I think on the GDPR issues, Your Honor, those are certainly secondary here. We do think it's relevant. We did brief the appropriate sections. You know, absent questions, we're happy to stand on the briefing on that issue and, otherwise, I'm happy to answer any other questions that the Court may have.

THE COURT: Thank you, no questions.

MR. HANSEN: Your Honor, Kris Hansen with Paul Hastings, on behalf of the Committee.

Just quickly, to address the one point that Ms. Sarkessian raised regarding 107(c), we do believe those issues are real and to the extent that the Court wanted to hear further evidence with respect to 107(c), we would ask for a continuance of the hearing on that basis, so that we could come back and provide more robust information to you. It would consist of information that's available from a public perspective, so newspaper articles, et cetera, that you could take judicial notice of, but we, also, would probably seek to put witnesses on, as well, to talk about what has happened with respect to criminal and other type of activity within the crypto space.

I don't know, today, whether we would be able to link that to the disclosure of a name from a bankruptcy case, but I think we could link it to disclosure of names, otherwise, that people are able to find out through social media and other avenues. But I wanted to make sure the Court understood, procedurally, where from the Committee stands, if you need information and more information on 107(c), we would like to have a continuance on that basis.

We think the record is very clear on 107(b) that you have what you need in order to grant the relief that the

debtors and the Committee are jointly seeking.

THE COURT: Thank you.

MR. HANSEN: Thank you, Your Honor.

MR. GLUECKSTEIN: Your Honor, if I could just clarify one point?

THE COURT: Go ahead.

MR. GLUECKSTEIN: I might have misspoke.

So, just to be clear, Your Honor has pointed out to me in an answer to Your Honor's question, currently, on our top-50 lists, we have disclosed non-customer names. So, for example, there are certain vendors at the non-exchange entities, because we have filed silos -- filed siloed top-50 lists. So, if there was, for example, a vendor providing services who is a non-customer, that information has already been disclosed and would be under the relief asked for today.

THE COURT: Is that for all creditors, solely creditors, or just some?

MR. GLUECKSTEIN: Yes.

THE COURT: For all?

MR. GLUECKSTEIN: All.

THE COURT: Okay. Thank you.

MS. SARKESSIAN: Your Honor, can I just --

THE COURT: Go ahead.

MS. SARKESSIAN: Your Honor, with that -- for the record, Juliet Sarkessian on behalf of the U.S. Trustee --

Your Honor's questions made me think of something with respect to the top-50 lists. Of course, you know, we formed a Committee and I believe all the members of the Committee were on that top-50 list. Their names were redacted because, at the time, it was subject to Your Honor's order.

Your Honor did indicate at the first -- or one of the hearings that if somebody is going to be on the Committee, they have to be willing to have their name disclosed, and we did file the notice of the appointment with their names. Since that is now -- and I understood that that was -- we discussed it with all the Committee members. Nobody had an issue with that. That has been disclosed.

Can the top-50 list be revised, in terms of redaction, to now unredact the information, with respect to those particular creditors, whose names have been disclosed?

THE COURT: Well, it certainly makes servicemembers to me. I don't see why it can't be done.

MR. GLUECKSTEIN: That can be done, Your Honor. Frankly, once we have clarity around the scope of what's staying or not being redacted, we will update the documents, as appropriate.

THE COURT: Okay.

MR. GLUECKSTEIN: But we certainly understand that point.

THE COURT: Okay. Thank you.

MS. SARKESSIAN: Your Honor, the only other thing I, again, would emphasize, I am confused about why there would be another hearing about 107(c). That was in the initial motion. Everybody knew today was the day of the hearing on these issues. If they had evidence to present, they should have presented it, so I would object to a continuance on that basis. We were ready, willing, and able to go forward today. Nobody told us in advance that they wanted a continuance.

THE COURT: Well, I understand that and ordinarily I would say, Yes, today was the day and you need to put on your evidence. I'm not going to grant any continuances.

But we're talking about individuals here who are not present, individuals who may be at risk if their name and information is disclosed. And if that is the case, I want to make sure I'm doing the right thing by those people.

MS. SARKESSIAN: I understand, Your Honor.

THE COURT: So --

MS. SARKESSIAN: Again, I would stress, we are not objecting to their addresses, email addresses, telephone numbers being redacted; we're only talking about names.

THE COURT: I understand.

MS. SARKESSIAN: Thank you, Your Honor.

THE COURT: Mr. Hansen?

MR. HANSEN: Yes, Your Honor. Again, Kris Hansen,

with Paul Hastings on behalf of the Committee.

Your Honor, with respect to the individual creditor names that are on the Committee, the notice that the U.S. Trustee filed for individuals does not include their addresses or their information; it just has their names. For the institutions, it obviously includes their addresses.

So, when the debtors make their disclosure with respect to the top 50 for those parties, we would ask, consistent with the notice that was filed from the U.S. Trustee, with respect to their appointment, that we do maintain that information under seal.

THE COURT: Is that an issue?

MS. SARKESSIAN: The U.S. Trustee has no objection. We're in complete agreement.

THE COURT: Okay. Thank you.

Anyone else?

(No verbal response)

THE COURT: All right. Well, this case certainly presents extraordinary circumstances just by the nature of the case itself. The fact that we have a list of people who may be customers, may be creditors, may be both, and I don't know who -- which is which, and they are -- there are nine million of them, I'm reluctant at this point to say I'm going to require the disclosure.

I think the debtor did put on sufficient evidence

to show that customer lists -- and I think it goes without saying that a customer list in any bankruptcy case is something that is protected by 107(b) as a trade secret. Companies hold those things very closely and don't want them disclosed.

The difficulty here is I don't know who's a customer and who's not, who's just a regular creditor. So, at this point, I'm going to overrule the objections and allow them to remained sealed at this point, but I'm not going to leave it open for six months. I'm going to -- I would approve an order that extended it for three months. By then, I think, based on the testimony and the arguments of counsel, we'll have a better sense of whether or not the customer lists is something that purchasers of these assets find value in and whether they are interested in making sure that they remain anonymous at this point.

On the 107(c) issue, as I already indicated, I do want more on that because I do want to make sure I'm protections the interests of these individuals. And it's interesting, because if you look at 107(a) and -- or excuse me -- 107(c), it refers to protecting information and refer -- and -- excuse me -- in defining what identification means, it refers to the Criminal Code 18 -- Title 18, Section 128(d). And if you look at 128(d), it says that the information includes names, numbers, or any combination of

those two that would allow the identification of an individual. So, certainly, the Criminal Code recognizes that disclosure of a name could result in the identification of an individual and if that individual needs protecting, we need to make sure that that is happening.

I don't have enough on the record today to say that 107(c) applies, but I want to make sure that I'm doing the right thing. So, I will, in connection with any further -- I guess the question, then, is do I hold that hearing before the three months is up? And I think in order to make sure that we have a fulsome record and that the parties have the opportunity to engage in discovery, if necessary, to identify people who might come in and testify, I want to make sure that they have the opportunity. So, we'll schedule a further hearing on the 107(c), in connection with the 107(b) follow-up in three months.

I do want to make sure that the debtors are, in compiling the nine million names, if there is a way to identify them if they are just a creditor and not a customer, I expect that to be done. And I would like to have a status conference on that question, alone, within the next -- I think we have another hearing scheduled on the 20th. So, let's have a status conference on the 20th on the question of how difficult it would be for the debtors to provide a list of creditors and/or customers and distinguish between

creditors and customers. And if you can just identify just customers on the list or, excuse me, just creditors on the list, I would expect that those names would be disclosed; again, not disclosing for individual's names -- excuse me -- addresses or telephone numbers or other identifying information.

But if there is -- if there are customers who are -- I keep confusing these two -- if there are creditors on that list of nine million who are institutions or corporations and they are only creditors, then their full identifying information should be disclosed, as required by the Code.

So, with that, I'm going to ask the parties to meet-and-confer and come up with a form of order that reflects what my rulings are today.

Are there any questions or did I miss anything that the parties want me to make sure that I've addressed?

MR. GLUECKSTEIN: From the debtors' perspective, no, Your Honor, that's very clear. Thank you.

THE COURT: Okay. Ms. Sarkessian or Mr. Finger, any concerns, other than the fact that I ruled against you?

MR. FINGER: I'll take judicial notice.

(Laughter)

MR. FINGER: Nothing more, Your Honor.

THE COURT: Okay. Thank you.

MS. SARKESSIAN: And, Your Honor, I apologize if I missed it. Did you make a particular ruling regarding individual creditors who are not customers, but are members of the U.K. or European Union or Japan?

THE COURT: No, I did not address that. That's another question and that's a difficult one. I don't think -- I don't have any evidence on that. All I have is the arguments of counsel.

Let's include that when we talk in three months, because I would like further evidence on that and maybe have someone come in and testify about the foreign law and how it affects, but I think, you know, I understand Mr. Finger and Ms. Sarkessian have pointed out that they don't believe that the European Code would apply here, but I think even Mr. Finger recognized that could be argued either way. So, it's a question, so I'd like to know what the answer to that question is. Would this actually prejudice the debtors somehow? If it would subject the debtors to large fines, and, you know, we've seen all this in the press where companies in Europe have had large fines imposed against them. It's certainly not something that I want to have happen to the debtors here. And it raises questions about whether I could even stop that. Does the automatic stay apply to the European Union seeking to impose a fine against the debtors for violating disclosures? I don't know. So,

those are all open issues I need to have further -- might need further briefing, too, on those issues.

MS. SARKESSIAN: And, Your Honor, just for clarity, so between now and the three months, do those names remain sealed?

THE COURT: Yes, until we -- when we get to the status conference next Friday, if the debtors can come in and say, We can provide a list of the nine million names and identify those that are solely creditors, then I might revise my order to say that those people's names and identifying information should be disclosed, except for individuals, at least with the constitutional creditors.

MS. SARKESSIAN: And, Your Honor, maybe another thing that we maybe could discuss at that status conference would be to the degree that the debtors aren't able to cull out which individuals are, in fact, citizens of the U.K., the EU, and potentially Japan?

THE COURT: If that's possible, that would be helpful, if we know how many people. From my -- I think from the first day hearing, I think I recollect there was some testimony in the declaration about how many of these people are not U.S. citizens; they're foreign citizens. So, it may be most, if not all of them. I don't think all of them would be, but at least most of them might be foreign citizens. I don't know.

MS. SARKESSIAN: And, Your Honor, they may be foreign citizens, but they might be citizens of India or someplace that's not controlled.

THE COURT: Right.

MS. SARKESSIAN: I just -- I'm not sure that we've heard testimony about the debtors' ability to determine citizenship of its customers. So, again, maybe that's something that can be discussed at the status conference, do they have the ability to determine what the citizenship is so that they can know whether or not to redact the name.

THE COURT: Right. I think that's right, yes.

MS. SARKESSIAN: Thank you, Your Honor.

MR. GLUECKSTEIN: That's fine, Your Honor. We'll be happy to address that issue at that point.

THE COURT: Okay. All right.

All right. Well, thank you. Anything else? So, I'll look forward to the certification of counsel to the order so far.

MR. GLUECKSTEIN: No, I think on that issue, that is it, Your Honor. We're happy to move forward with the agenda unless Your Honor would like to address any other issues?

THE COURT: Let me see. Mr. Finger?

MR. FINGER: May I be excused?

THE COURT: Yes, thank you.

All right. Let's go forward.

MR. GLUECKSTEIN: All right. Thank you, Your Honor.

I'm going to take one item, if I may, if it pleases the Court, just Agenda Item 22, slightly out of order, and then I will turn things over to Mr. Dietderich. Agenda Item 22, Your Honor, is the debtors' motion to authorize, provide indemnification, and exculpation on a final basis to certain individuals taking actions to secure at-risk cryptocurrency and cash. The motion was filed under seal prior to -- in connection to the first day hearing at Docket 95. An interim order was entered at Docket 140 and subsequently unsealed after a discussion with the Court recently at Docket 323.

Your Honor, there have been no objections filed with regard to the motion. The debtors have received informal comments and have had discussions at length with the United States Trustee and the official Committee.

In response to those comments received, the debtors did file a revised, proposed order last night. The motion, Your Honor, was filed, as the Court will recall, on an emergency basis when it became clear in the initial days of these cases that certain of the debtors' cryptocurrency and cash assets were at significant risk of being hacked, stolen, lost, or compromised, if not immediately moved and

secured. This required individuals to act quickly, on behalf of the debtors, to take actions in a difficult environment.

Those assets included crypto and other digital assets that were held or maintained on third-party exchanges, or in so-called hot wallets, that are not maintained on third-party exchanges. There were cash assets held in bank accounts around the world and in certain cases, on third-party brokerages, where securities and other assets were being held.

I am pleased to report to the Court that very significant progress, and Mr. Dietderich alluded to this, this morning, has been made on the work that was done and necessary for which this motion and an interim order has been integral, but the work to locate and secure assets remains ongoing. Transfers of cryptocurrency are subject to certain inherent risks. Some of those risks are very amplified, here in these cases, due to the inadequacy of prior controls before the debtors' current management team got in and put them in place.

As a result, the protection for a limited number of individuals on the frontline of this work remains critically important. I do want to note for the record, based on discussions with the Committee, that the debtors are okay with the requests from them to be sure that to the extent there are indemnification payments that ultimately

need to be made under the order, that the debtors will seek payment from any applicable insurance policies and that the debtors retain all rights of subrogation with respect to obligations that might arise under this order.

I think the Committee is going to want to be heard on this, as well, but from the debtors' perspective, Your Honor, we would ask that the order be entered.

THE COURT: Okay. Thank you.

Mr. Hansen?

MR. HANSEN: Yes, Your Honor. Again, Kris Hansen with Paul Hastings, on behalf of the Committee.

Your Honor, that was really our main point, with respect to the indemnification motion, which is that if indemnification payments are going to be made, that the debtor use its best efforts, first, to look to applicable insurance, which is not only D&O insurance, it's other professional liability insurance, as well. As the motion makes clear, they look to include parties in connection with that who may be covered by their own insurance. And so, we want to make sure that insurance assets are used to make those payments, if at all possible, and that if the debtor needs to advance payments first, that it has subrogation rights to move against that insurance.

Ideally, we would include that in the order so that it's clear. Obviously, we've all stated it here on the

record, so if we could include it in the order, that would be the Committee's favored approach.

THE COURT: Okay. Is there any objection to revising the order, Mr. Glueckstein?

MR. GLUECKSTEIN: No, Your Honor. We're happy to sit back down the Committee and discuss the order further and submit an agreed-upon form of order.

THE COURT: Okay. Thank you.

Was the Committee the only objection on that?

MR. GLUECKSTEIN: Yeah, I don't know if the U.S. Trustee has anything further on this motion.

MS. SARKESSIAN: Yes, Your Honor. Again, for the record, Juliet Sarkessian on behalf of the U.S. Trustee.

I believe we have worked out all of our issues with the debtors on this. I think the only thing I just want to make clear on the record is the proposed final order will have an exhibit. The exhibit needs to be filed under seal, but the order itself, once it gets entered, should -- the order itself should not be under seal. The exhibit is a list of people's names that are going to be covered by the order getting the indemnification and exculpation.

We've had some trouble with -- a seal order in the past got entered under seal, so I just want to make sure that it's clear that the order, itself, is not under seal, but the exhibit will be, I guess, right? I think that's what we

need.

MR. GLUECKSTEIN: That's correct, Your Honor. We're not looking to seal the order. We've unsealed, now, with the Court's permission, the interim order.

Ms. Sarkessian is correct, we will, and we have, in fact, filed under seal, already, the list of names that's contemplated -- that is contemplated to be attached to the order. And so, when we submit the final order for Your Honor's review and signature, the order, then, would be on the docket, but the exhibit to that order would remain filed under seal.

THE COURT: Okay. That's fine. I did see that list already. I saw it this morning.

MR. GLUECKSTEIN: Thank you, Your Honor.

THE COURT: All right. So that one, again, will be submitted under COC?

MR. GLUECKSTEIN: Yes, once we agree on the additional language with the Committee, we'll submit that under COC.

THE COURT: Okay. Thank you.

MR. GLUECKSTEIN: And with that, Your Honor, I will cede the podium to Mr. Dietderich to address cash management.

THE COURT: Okay.

MR. DIETDERICH: Hello, again, Your Honor. For

the record, Andy Dietderich, Sullivan & Cromwell, for the debtors.

I have Docket 21, the cash management order. Your Honor, on this one, all objections have been resolved, in our view, other than one objection from the U.S. Trustee. Before addressing that objection, I wanted to -- I have a sentence to read into the record and a couple general points to the Court. I also want to talk about the evidentiary record here for just a moment.

From the debtors' perspective, we believe the U.S. Trustee has an objection that's a pure point of law, which is about whether or not the Court has authority to grant superpriority status to claims against the cash management system. I do not believe her objection goes to the reasonableness of that decision and we do have a record, of course, for the reasonableness of the cash management system from Mr. Mosley's prior declaration, which is on the docket from the interim hearing.

So, I'd like to go ahead and proceed on that assumption, but to the extent that Ms. Sarkessian does have an objection to the reasonableness of the cash management procedure, we do reserve the right to call Mr. Mosley, put him on the stand, and ask him a few questions.

THE COURT: Why don't we find out before we go?

MS. SARKESSIAN: Your Honor, it's a pure legal

argument. I'm not making any argument about the reasonableness of any decision that the debtors have made in this regard, just whether it's permissible under the Code.

THE COURT: Okay. Thank you.

MR. DIETDERICH: Okay. Thank you, Ms. Sarkessian.

On that basis, Your Honor, the evidentiary record here is we're relying on is the declaration of Mr. Mosley in support of first day relief, Docket 57; his supplemental declaration, Docket 93; and although we're not relying on it for evidence, for the Court's information, there is a second supplemental declaration of Mr. Mosley, last evening, which is generally applicable with the 13-week cash forecast, and that's at Docket 460.

So, Your Honor, we have, in order to resolve the objection from Evolve Bank, which is one of the banks where we have accounts that are nominally recorded as FBO accounts, we have a little bit of language to read into the record. So, in paragraph 13 of the form of order, where it speaks about the rules for closing FBO accounts, we have committed with Evolve that we will not close the accounts at their bank without notice and a further order of the Court. And so, we will be submitting a revised form of order where the language that will make that clear and we have text that we've worked out with counsel to Evolve.

Second, Your Honor, we have some objections from

shareholders. So, a couple of shareholders have surfaced, represented by our friends at Debevoise, and they've reviewed this order. They have, I believe, an objection or a reservation of rights, one or the other, one file. And we've worked out with them that we've made some commitments to them to share information informally, that they've accepted, and on that basis, I believe their objection is resolved.

With respect to the overall motion, Your Honor, this is really the same cash management system that we proposed earlier, so there's been no substantial change to the management system we're proposing going forward, with one exception. During the interim period, we had some gates on the ability to move, to make advances from silo to silo. There was a hard cap on the movement of money from silo to silo.

We've had a number of discussions with the Committee about what the right approach is to this case, in terms of movement of money in the cash management system across silos and we've agreed with them on a flexible procedure where we will use a budgeting and projection process and involve them periodically in that process. And to the extent that we agree that it's appropriate and prudent to move money from the silos, we're permitted to do that under the cash management system and our business judgment with the committee's involvement.

However, to the extent that the Committee disagrees, either with the projections about amount of silo movement or we have variances from time to time that are larger than beyond a certain cap, in that circumstance, the Committee can come back to Your Honor on an accelerated schedule with an objection.

And we think that's an appropriate basis. You know, we will be moving money between the silos, only to the extent that we think this obviously creates a reliable, administrative claim. We have substantial, unencumbered asset value at all of the silos. The question might just be, really, a question of working capital, until we're able to monetize some of the assets and some of the pockets that we have.

There's been no objection, Your Honor, that goes to that mechanism. The objections that we've resolved went to more of question, should we charge interest and how should the mechanics of the details work?

So, with that, Your Honor, I'll turn to the remaining objection that we have, which is the objection of the U.S. Trustee on the legal question of whether or not Your Honor has the authority to grant superpriority status to advances under a cash management system. There's not a lot of case law that will be helpful to us on this point. I think we have a reading of the Bankruptcy Code that says that

which is not prohibited by the Bankruptcy Code, and we have an evidentiary basis of reasonableness for, Your Honor can award under 105.

We also think for the reasons that we put in the papers, which I don't need to rehearse, that the proper allocation of risk in a system with many debtors between administrative creditors, so it's really a question of allocation of risks among different administrative creditors in a common system, that if the advances by the cash management pool are given the superpriority status, the consequence of doing so is that the first loss if there was a problem, and heaven forbid, we don't expect there to be a problem, but if there ever was a problem anywhere in part of our system, the superpriority protects the cash management system and the other debtors against a localized problem and it allocates, first, administrative loss to the administrative creditors of that particular debtor.

The converse rule, a rule that says it was an ordinary administrative advance, the problem with that rule in our mind is that it, then, socializes any loss, any administrative loss among administrative creditors in our case, all over the world. And so, this superpriority status for administrative advances, we believe, is consistent with the approach that had been taken by the debtors that have really thought it through in the complicated cases, in

particular, cross-border cases. It's consistent with the way -- and, again, without evidence on this, Your Honor, but from -- I'll speak, just informally, from personal experience -- it's the way international companies think about cash management, making sure the system is protected, as opposed to any particular arm of the organization, and we believe it's the reasonable approach, you know, on the facts of our particular case.

In terms of the pure legal issue, we see nothing in the Code that prohibits Your Honor from doing it. The U.S. Trustee, in respect to the argument, says there's only two circumstances where superpriority expense can be awarded by a debtor and we think those are two circumstances -- excuse me -- where the Code contemplates it, but it -- it's not otherwise permitted. And to the extent we do so on the record, so that all of our administrative creditors know that the advances have superpriority status, we think there's adequate notice to do it. In some ways, the greater power implies the lesser. We should be able to incur administrative debt at one of our subsidiaries on the understanding that the person we're dealing with knows that advances against the cash management system do have a priority.

Now, the last thing I'll say, Your Honor, is this doesn't come up super often because of DIP financing and the

arrangements of DIP financing often supercede this, and it's embedded in the cash management system that's somewhat connected, at least, to the DIP loan. Here, we don't have a DIP loan, so there's a little bit more attention on the question, but those are my remarks on it and I'm happy to cede the podium to Ms. Sarkessian and she can give you the contrary view. Thank you.

THE COURT: Thank you.

I think the Committee wants to weigh in first. Hold on one second. We have a -- I want to make sure --

(Pause)

THE COURT: The Zoom video went out? They can still hear me, though?

(Pause)

THE COURT: That means everybody else has to dial back in?

(Pause)

THE COURT: A technical glitch.

MR. DIETDERICH: I hope it's nothing I said.

THE COURT: It happened when you stood up. I don't know.

(Laughter)

THE COURT: All right. Unfortunately, we have to have IT come up and take a look at what's happening here. So, let's take a recess until we can get this resolved,

hopefully, pretty quickly. Just let me know when we're ready.

All right. We'll recess until we get this fixed. Thank you.

(Recess taken at 12:17 p.m.)

(Proceedings resumed at 12:40 p.m.)

THE COURT: Okay. Ready to go.

MR. GILAD: Good afternoon, Your Honor. Erez Gilad, Paul Hastings, LLP, proposed counsel to the official Creditors' Committee.

Your Honor, I rise only to make some comments, with respect to the cash management motion. We, as a Committee, support the cash management and wanted to describe to the Court that we have spent a fair amount of time negotiating and improving the terms of the cash management order.

Our approach to the cash management system in the proposed form of order was to facilitate the use of a centralized cash management system, which all else being equal, is rather common to complex corporations of this size, but at the same time, reflecting the realities of the case, preserving parties' rights, with respect to assets of the debtors, offering visibility into movement of cash, and enacting appropriate safeguards for the benefit of the debtors' estates.

To that end, as counsel indicated earlier, we did negotiate an extensive regime of reporting, that is weekly and monthly reporting, delivery of monthly budgets of various tests, intercompany reconciliation reports as well, consultation rights, and opportunities for the Committee to step in and seek relief before the Court, if there are certain objections to either, to the budget or any disbursements that sought in excess of a 10 percent variance. There's also a negotiated result with respect to imposing a cap on transfers to nondebtors.

We think, all in, these provisions strike the appropriate balance between assuring the proper movement of cash and the efficient administration of the case, which, frankly, benefits all constituents, but also affords appropriate protection to the debtors' estates. And it's important to note that as part of the negotiated result, we did incorporate language into the cash management order which provides a fulsome reservation of rights for the benefit of parties, with respect to entitlements regarding customer funds, and also a fulsome reservation of rights with respect to the rights to assert whatever rights or remedies they have, notwithstanding the silo creation, and notwithstanding the movement of cash between accounts and between silos. So, we thought that that was similarly important for the benefit of constituents in the case both, customers and creditors

alike.

From the perspective of the legal issue that's been presented in terms of the admin priority versus superpriority, obviously, the debtors' intent here is to ensure that to the extent that there is movement of cash, that the appropriate estates are protected. In terms of the superpriority status, again, our perspective there is that the debtors' view is that it's simply additive protection for the benefit of the transferor estate.

It's my understanding that from a process and notice perspective, at least, I believe that the interim form of order included the establishment of a superpriority claim, with respect to the transferor estate, so I view it from that perspective, I think it's been on notice now, for purposes of the second day hearing, that that relief would be requested. So, I think that notice, coupled with the comments made by counsel that we don't believe that there's any prohibition against the Court affording superpriority status, we support the relief requested by the debtors.

Unless Your Honor has any questions, I believe that's all I have to say.

THE COURT: All right. Thank you. No questions, thank you.

MR. GILAD: Thank you, Your Honor.

THE COURT: Okay. Let's see. We have another

speaking in support of?

MR. LEVINSON: In support, yes, Your Honor.

THE COURT: Okay. Go ahead.

MR. LEVINSON: Good morning. Sidney Levinson, Debevoise & Plimpton, for Paradigm operations.

Paradigm is a substantial stakeholder in these bankruptcy cases, including about 280 million of equity investments in two of the silos, West Realm Shires and FTX Trading Ltd.

We've heard Mr. Gray and others take aim at the poor recordkeeping of the debtors prior to the bankruptcy filing, and we recognize that the process of identifying the assets and the liabilities of each debtor, as well as the prepetition intercompany claims and relationships that exist among them is very much a work in progress. I mean, it's fair to say none of us really know at this moment how all of that is going to shake out, but given that state of affairs, it's absolutely vital for all stakeholders to be able to preserve the status quo as of the petition date to the fullest extent possible and to maintain the separateness of the various debtor entities to the fullest extent possible so that each of the individual debtors and their respective stakeholders aren't prejudiced by anything that's going to be happening during the bankruptcy cases.

The cash management order, obviously, has some

impact on that status quo and, accordingly, there need to be protections implemented to minimize that threat.

We engaged in informal discussions, we did also file a limited objection, but those informal discussions have been ongoing with the debtors for several weeks to address our concerns and in fact the revised form of order includes many of the suggestions that we had made with respect to the form of order. And given that, as well as the commitments that Mr. Dietderich referred to in his comments, Paradigm is withdrawing its remaining objections.

I would, if I may, Your Honor, just like to be heard briefly on the United States Trustee's limited legal objection because the inclusion of super-priority claims is fundamental to our support of the current cash management order in its current form.

Now, contrary to their position, I would submit that the Bankruptcy Court does in fact authorize, expressly authorize the grant of the super-priority claim and I think that express authority can be found in Section 363(e), which governs the use of property in which an entity has an interest. If I can indulge Your Honor just to read from 363(e): "Notwithstanding any other provision of this section, at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the Court, with or

without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interests."

Now, here, the debtors and non-debtors whose funds are being used have an interest in these proceeds and are entitled to request a grant of adequate protection from the debtors that are in fact receiving those proceeds or the benefit of those proceeds. Section 361 authorizes the grant of adequate protection in many forms, including the realization of the indubitable equivalent of an interest in such funds.

And one thing that 361 makes clear is that a mere administrative expense priority is not sufficient by itself to provide adequate protection. Thus, we would submit a super-priority claim is the bare minimum that would be required to provide adequate protection and, indeed, if it turns out that any form of adequate protection turns out to be insufficient, the entity advancing such funds would be entitled to a super-priority claim under Section 507(b).

So we think the United States Trustee's limited objection is misplaced not only for all the reasons outlined by the debtors in their paper and by Mr. Dietderich today, but also by that provision as well, and that this Court does in fact have the authority to grant super-priority claims and we respectfully request that Your Honor approve that

provision.

Unless Your Honor has any questions --

THE COURT: No questions. Thank you, Mr. Levinson.

MR. LEVINSON: Thank you.

MR. WORALDEIN: Good afternoon, Your Honor, Elie Woraldein, Debevoise & Plimpton, a separate Debevoise & Plimpton team, on behalf of certain Lightspeed Funds, here together with our co-counsel Cole Schotz.

I'll be very brief, Your Honor, because I don't want to repeat a lot of the points that were raised by Paradigm, as well as the committee. Our interests and the concerns that Paradigm Lightspeed had are very similar to the concerns of the committee, as well as the concerns of Paradigm.

But, very briefly, as noted in our reservation of rights, which is Docket Number 389, Lightspeed Funds are substantial equity holders in several of the debtor entities. Based upon the debtors' public filings and statements thus far in the case, the debtors have acknowledged that certain FTX entities in the WRS silo, as well as certain other entities, are solvent.

So, as noted in our brief, Lightspeed -- the Lightspeed Funds' concerns were that it's imperative in this case to preserve the status quo, for all of the reasons noted

by Paradigm's counsel just a moment, that it's imperative to maintain corporate formalities and preserve the status quo, especially at this early stage of the Chapter 11 case, and we must do that to the greatest extent possible in order to ensure that the rights of legitimate stakeholders are preserved. Lightspeed was concerned that the original motion and proposed order as originally drafted -- the debtors were able to transfer funds from debtor entities to non-debtor entities and vice versa and that's how they were intending to fund these Chapter 11 cases, the concern of Lightspeed was that those initial proposals didn't have sufficient safeguards to protect the interests of those solvent debtor entities, as well as the various stakeholders of those debtor entities and, therefore, the original proposed order left a substantial risk that solvent FTX entities will be funding -- seeing their cash being used to the benefit of other debtor entities.

And this wasn't only a concern of the Lightspeed Funds, this is a concern that all stakeholders -- as, you know, the committee noted as well that it's important that different stakeholders, obviously, have different claims against different legal entities, so it's imperative to preserve and maintain corporate formalities in order to ensure that each stakeholder against the individual debtor entity could preserve the status quo of whatever cash or

rights or assets they have.

As noted earlier, we're happy to report we have, in light of the revisions to the proposed order, most importantly, the grant of the super-priority claim, as discussed earlier -- and I won't repeat those legal arguments that were already mentioned -- we believe that they will satisfy Lightspeed Funds' concerns at this time and we're going to withdraw our reservation of rights and any outstanding concerns in light of the extensive back-and-forth arm's length discussions we've had with FTX's counsel over the last few weeks.

However, we will note just for the record that we'll continue to monitor these cases carefully, especially in light of the reservation of rights for the various issues in the proposed order, namely interest, allocation of expenses, and some of the other points, which are all issues that are reserved for later in the Chapter 11 case, but the Lightspeed Funds will maintain careful monitoring of the case just to ensure that the debtor entities are maintaining corporate formalities, transparency, as we heard earlier in the hearing, the key of tracing and monitoring all the cash flows during the Chapter 11 case just to ensure that no specific debtor entities and their various stakeholders are prejudiced at the expense of other debtor entities.

So, unless the Court has any questions, that's all

I intended to add to the record.

THE COURT: Okay. Thank you --

MR. WORALDEIN: Thank you.

THE COURT: -- no questions.

Anyone else in support?

(No verbal response)

THE COURT: Okay. Ms. Sarkessian?

MS. SARKESSIAN: Again, Juliet Sarkessian on behalf of the U.S. Trustee.

Your Honor, the -- as Your Honor is of course well aware, the priority scheme of the Bankruptcy Code is a key part of the Bankruptcy Code, it is crucial and it's set forth under 507. There are only two grounds in the Code where super -- we call it super priority, it's an administrative claim that has priority over all other administrative claims, there's only two places in the Code that provide for that, one is under 364(c) in connection with DIP financing and the other is under 507(b) for adequate protection of prepetition liens.

So now Counsel for Paradigm had just argued that super priority could be granted under 3 --

THE COURT: You might need to lower the microphone some.

MS. SARKESSIAN: Oh, I'm sorry, yeah. Thank you, Your Honor.

On the super priority, it could be allowed under 363(e), but if you -- and it does talk about adequate protection there, but if you turn back to 507(b) -- and 507(b) does reference 363 -- it says, if under 362, 363, or 364 of this title, if the trustee provides -- or, of course, debtor-in-possession -- provides adequate protection of an interest of a holder of a claim secured by a lien on property of the debtor. So it is limited to that, there must be a lien. So I don't think that -- it's my understanding that the transfers we're talking about here between debtors or between non-debtor affiliates to debtors are not going to be secured by a lien and certainly not on a prepetition lien.

So the debtors' argument -- and other parties have argued that, well, just because the Code points out two places that allow for super priority claims does not mean that super priority claims are otherwise prohibited.

The priority -- again, the priority of claims under the Bankruptcy Code is a key portion of the Code. And so when the Code says there's two places where you get a super priority claim and there's no other provision where you could say, all right, well, this -- you know, maybe under this one, and that's it, that is it. Otherwise, what you come up with is, well, then what's the standard for super priority claims? I mean, we know it would of course have to be a post-petition claim, but then what's the standard? Is

it just whatever the debtor thinks should be a super priority claim?

I've heard talk about, well, there was plenty of notice. If there's no statutory authority to grant something under the Code, then giving people notice about it doesn't resolve that problem. It's great to give parties notice, but you have to have a statutory provision to hang your hat on.

Again, what are the parameters, who decides and what are the parameters of other super priority claims that are not referenced in the Code? You know, here, what the debtor is saying is it's basically elevating claims between themselves and non-debtor affiliates into the debtor, that those claims are being elevated over claims of ordinary post-petition vendors and service providers. They're the ones that are being effectively -- they're having their claims subordinated, effectively, without, again, there being anything in the Code to provide for that.

And the other problem is, is when you start expanding super priority to cover other things that are not specified in the Code, eventually, it becomes meaningless because, you know, everybody is going to get super priority. I mean, for example, if you say, well, maybe you view these transfers between the debtors as post-petition DIP financing, in which case please file a motion to get that approved, but, well, then one could say that a vendor -- if a vendor is

selling goods on 30-day terms, that's giving the debtors post-petition credit, do they get a super priority claim? I mean, where does it stop? Because if everybody gets super priority, then super priority is completely meaningless.

And, you know, somebody had said this is usually not an issue because usually there's DIP financing, under the Code, they get super priority, and that's the end of it. They're not going to share super priority with, you know, inter-debtor transfers, you know, we don't have that here, but that doesn't mean -- just because we don't have a DIP financer, it does not mean a super priority status can be given without authority under the Code just because it's convenient for the debtors or because they gave notice to parties.

And, you know, as we mentioned in our objection, I mean, here there is -- I guess I would say it's somewhat ironic that -- you know, I've been told by debtors' counsel that the majority of these transfers between debtors are going to be loans from the Alameda Silo to the dot.com silo. That is not in the motion. The motion actually has very little information about what these transfers are and why they're needed or the amounts or anything. That's what I was told, I assume that's true. And, of course, we have no prepetition allegations of money from customer accounts in the dot.com silo being rated and sent to Alameda. Now,

Alameda is going to be lending money to the dot.com silo and getting super priority status. There's something that's, I'd say, troubling about that.

And I understand that there's reservation of rights, you know, put in the order so that if later on it's determined that money that's -- that Alameda has really belongs to customers of other debtors, you know, that those rights are reserved, but, again, elevating those types of transfers from the Alameda silo to the dot.com silo over ordinary course professionals -- not professionals, excuse me -- well, actually, they are elevated over ordinary course professionals as well. And the professionals are here and if they want to voluntarily subordinate their claims, then that's fine, they can do that, somebody can consent to that, but there's certainly no evidence that the numerous -- I'm assuming numerous vendors and service providers to these debtors post-petition have agreed to have their claims subordinated to claims between the debtors or claims from non-debtor affiliates to the debtors that take place after the petition date.

THE COURT: Well, isn't there protections built in to avoid the issue of Alameda loaning money to the dot.coms and the question being, well, is the money that Alameda is loaning belong to somebody else, and that's being preserved, right? I mean, the only thing that the super priority claim

will do is make sure that any money loaned goes back to Alameda and then the question of whether that money actually belongs to Alameda, or some of the other debtors or customers or whatever the case may be, is something that can be decided at a later time?

MS. SARKESSIAN: Yes, Your Honor, it is my understanding that that is being preserved, but it does not -- it doesn't address the issue of not having statutory authority to expand super priority claims beyond what is specified under the Code.

THE COURT: Okay, I understand your point.

MS. SARKESSIAN: Unless Your Honor has any further questions, that concludes my argument.

THE COURT: Okay. Thank you, Ms. Sarkessian.

MR. DIETDERICH: Thank you, Ms. Sarkessian.

Very briefly, Your Honor, Andy --

THE COURT: You might need to raise the microphones back up again just to make sure --

MR. DIETDERICH: Sure, sorry. Understood, understood. We should leave one low and one high, maybe.

Your Honor, just very, very briefly. One factual correction is we're talking about liabilities to the cash management system, under no circumstances are we granting super priority status to a claim by a non-debtor. So even a non-debtor subsidiary won't have super priority status under

the cash management system; this is for inter-debtor advances only.

The only other thing I'd say is that there's lots -- you know, practical arguments about this. I think the question before the Court is whether Your Honor has authority to grant super priority status. And, again, I submit that, with respect to Ms. Sarkessian's position, there's no case cited that you don't have the authority, there's no case cited for the reading of the Bankruptcy Code that says that, in the absence of a specific reference to super priority, you can't grant super priority status, and there's no case cited for her particular reading of 105, despite lots of jurisprudence about how 105 is applied to circumstances where the Code is, as it is in so many things in our practice, silent on a particular practical issue.

Congress did not think about the question of how to run intercompany cash management systems in a multi-jurisdictional debtor. I can assure you without having to look to it, we're not going to find that in the legislative history of the Bankruptcy Code. But what it did do is it gave the debtors discretion, put a creditors committee in charge to oversee us, and gave Your Honor the authority where, if something is not prohibited by the Code under 105 and consistent with what needs to be done in a case, to issue the relief on that basis.

I think there is an interesting argument whether you would have authority under 363(e) to do it as adequate protection for a use of property of one debtor by another debtor, and whether a debtor is an entity within the meaning of 363(e). We didn't make that argument; I think it's an interesting argument. I think we're just standing under basic 105 authority and we think that's sufficient.

THE COURT: Okay. Thank you.

MS. SARKESSIAN: Your Honor, if I could just address this one factual issue. I'm looking at the proposed final order that was given to me last night that I'm not sure if it's been filed yet, but the language says the net post-petition liabilities at any time, from any debtor to any other debtor -- and then they go silo pooling account -- and then they have from any non-debtor affiliate to any debtor under the post-petition cash management system shall be entitled to super priority. That's paragraph 5.

So, if that's wrong, we can change that, but I'm reading that to say transferred from a non-debtor affiliate to a debtor gets super priority.

MR. DIETDERICH: Ms. Sarkessian, thank you. Let me look, a quick look.

(Pause)

MR. DIETDERICH: I think that's correct, I think that is wrong. That speaks to an obligation nonsensically

from a non-debtor to the system having super priority status, which is an overdraft. Obviously, you can't award super priority status to the obligations of a non-debtor because you don't have authority over the non-debtor.

So that can be -- that's --

MS. SARKESSIAN: That can be taken out?

MR. DIETDERICH: -- an excellent catch and we can fix that in the form of the order, and thank you very much for that.

MS. SARKESSIAN: At least my work is worth something.

MR. DIETDERICH: It's worth a great deal.

(Laughter)

MR. DIETDERICH: And that's not -- and, for the record, that is by far not Ms. Sarkessian's only very good catch in our documentation.

THE COURT: Oh, I know. She catches a lot of stuff.

MS. SARKESSIAN: Thank you, Your Honor. Well, I'm glad we were able to say that.

THE COURT: All right. Okay. Well, the only question is whether I have the authority to grant super priority status under 105 and I think that I do. It's not an issue that has, obviously, come up in the past because there is no case law on it, but a number of courts have entered

them in situations such as this.

And, again, we have an unusual situation here. There's no DIP financing, the debtors are operating on their -- whatever cash they have available, and some might not have the cash to do it. And so I think this is consistent with 105, to the extent that 105 is intended to provide the Court with the ability to fashion resolutions where the Code might not provide a specific resolution, but it's necessary to protect the interests of the constituencies involved in the case. And, here, I have all of the constituencies agreeing that this is good for the case and good for their individual constituencies.

So I will overrule the objection and will enter the order subject to the revisions. And you can work with Ms. Sarkessian and, again, submit this under COC once you have a revised form of order.

MR. DIETDERICH: Thank you, Your Honor.

I think the last -- not the last -- I'm sorry, if you could just give me a second.

(Pause)

MR. DIETDERICH: The last motion for Your Honor to consider today is the bidding procedures motion, Docket 24. I was going to say last, but we also of course have the status conference on schedule -- or the scheduling conference.

THE COURT: Okay.

MR. DIETDERICH: So, Your Honor, the bidding procedures motion, before we start here, we do have an evidentiary record on bidding procedures today. There are two declarations to move into evidence. The first is a declaration of my partner Brian Glueckstein at Docket 412. This is simply putting in front of the Court the privacy policies for the various debtors. And, again, Ms. Sarkessian can confirm, but I do not believe we have an objection on anything that goes to the consumer ombudsman issue -- if I'm saying that correctly, ombudsman, I've always had trouble with that word.

THE COURT: Ombudsman, I believe.

MR. DIETDERICH: Ombudsman. The -- I believe that the consensus is that no ombudsman is required in the case, but Ms. Sarkessian can confirm.

And so I would just ask to move the declaration of Mr. Glueckstein into evidence.

THE COURT: Okay. Is there any objection?

(No verbal response)

THE COURT: It's admitted without objection.

(Glueckstein declaration received in evidence)

MR. DIETDERICH: The second is the declaration of Kevin Cofsky, who we heard from earlier, at Docket 413, and I'd like to move that into evidence at this time as well.

I think Ms. Sarkessian may have a comment about that declaration.

THE COURT: Okay.

MS. SARKESSIAN: For the record, Juliet Sarkessian on behalf of the U.S. Trustee.

I object to the provision -- well, the statements in paragraph 17 of Mr. Cofsky's declaration concerning bid protections. He addresses -- you know, he gives an opinion that certain bid protections are, you know, common, et cetera. No -- the Court is not -- nobody is asking the Court to approve bid protections at this time. This is not relevant. We would ask that this -- there may be something else in paragraph 17 that doesn't relate to bid protections and I don't object to that, but anything relating to his opinion or his testimony about bid protections, we would ask that it be stricken at this time, you know, without prejudice if they want to submit that, if later on the debtors are requesting bid protections, and there is a procedure -- within the proposed bid procedures order, there is a procedure whereby they can do that if they find a stalking horse. At that time, if they want to put in -- and, in fact, we would say they would need to put in evidence to support it -- they can do that at that time.

THE COURT: Okay. Mr. Dietderich?

MR. DIETDERICH: Your Honor, Andy Dietderich. We

disagree. We think Mr. Cofsky's paragraph has actually been drafted with respect to the basic situation, which is that we are neither approving a sale nor the grant of stalking horse protections today. However, we are publicly announcing to the world that bidding protections, stalking horse protections are available. And, in addition, we're shortening the notice period for people to object to those stalking horse protections.

So Mr. Cofsky's declaration is not intended to prejudice anybody's ability to argue that bidding protections given to a particular bidder in any circumstance are unreasonable or inappropriate. What they say is that, based on his experience with bidding procedures generally, bidding protections, as reflected in what we're doing publicly, are appropriate and customary for sale transactions of this type and in amounts that are reasonably and generally consistent with such amounts in comparable circumstances. He's not saying that as applied to the facts of any particular bidder or situation that they will be reasonable, but they're reasonable generally.

In addition, he's saying that having this publicly helps, quote, the ability to attract a prospective stalking horse bidder by offering the bidding protections.

So it helps us as the debtor to have a banker who has expertise in this area be able to say to anybody who

might be interested in putting forth a stalking horse bid that, generically, this kind of stalking horse protection is reasonable and customary for the circumstances. We will not be making any assurances to a bidder that bidding protections will be granted to them in the particular facts of their circumstances, nor do we mean to prejudice in any way the ability of Ms. Sarkessian or the committee or any other stakeholder to argue that the bidding protections as applied to a particular bidder are unreasonable.

On that basis, we'd like to have the evidentiary record that we were proposing.

THE COURT: All right. I'll overrule the objection and take the testimony for what it is, Ms. Sarkessian. It certainly is not intended to indicate that these bid protections will, in fact, be granted and everyone's rights are reserved to object in the future, once we have potential bidders lined up and are asking for bid protections.

MS. SARKESSIAN: Your Honor, will my ability to cross-examine the witness later, if there are bid protections being sought, will that be preserved or do I need to cross-examine him now?

THE COURT: Oh, no, absolutely preserved. You can -- you'll be able to cross him on anything when we get to that point.

MS. SARKESSIAN: Thank you, Your Honor.

MR. DIETDERICH: Your Honor, the other concerns -- so, as we move down to the merits of the bidding procedures order, Your Honor, I believe that all concerns have been addressed and objections resolved, other than the objections of the U.S. Trustee and Mr. Mallon (phonetic), the Mallon objection that's on the docket.

Before I address the specifics of those, I'd like to make a few general points for the Court and for the record. The first is, by far, the most important. We have not made a decision to sell anything and we're not asking you permission to sell anything today. This effort is part of a process to look at all of our options across the very complicated set of assets. These particular businesses have been identified earlier, because they are less integrated, and sometimes not integrated at all, into the operations of FTX.

Ledger X is a separately regulated exchange, a derivative exchange with a different business model, regulated by the CFDC. It has regulatory capital requirements, a relationship with its regulators, et cetera. Embed (phonetic) is not regulated to the same -- in the same way, but is separate.

Japan is in Japan, subject to pretty intense regulation by the Japanese authorities. The Japanese rules

for cryptocurrency are totally different than our rules. Japan requires, for a cryptocurrency business, the segregation in cold wallets, of all of the cryptocurrency responding to customer entitlements and it has very strict rules about entrust relationships that are established under law and segregation rules that are established under law for cryptocurrency and cash. A completely different profile from what's happening in any other exchange transactions.

And Europe, of course, has a Cyprus exchange that has been run independently with a different customer base. All of these businesses were actually recently acquired by FTX; they weren't originally developed as part of the development of the international platform. They were all recent acquisitions that have not been fully folded in to FTX's operations, which is one of the primary reasons that we believe there may be independent value.

But again, this is price discovery. This is the ability to create an option to sell if the debtors and the consulting professionals believe it's appropriate under the circumstances. And I just want to assure everyone that there has been no decision. Our Board hasn't decided to sell anything and we would need to present the business case to our Board, based on the facts and circumstances.

The second is related, that we don't know if we're going to sell the businesses, how we're going to sell the

businesses. So, there's a comment from the U.S. Trustee that we should have a form of asset purchase agreement. We don't have a form of asset purchase agreement, because we don't know if it's an asset purchase. It might be a stock sale. It might be a merger. We might sell one of the businesses in combination with one of the other businesses.

What will determine this will be indications of interest that we have not received and our sense, again, working with the consulting professionals on how to make the most money to return to creditors and customers.

There is a question whether some of these businesses have synergies with businesses that we are looking at retaining or possibly reorganize or selling separately, for example, the international platform, or even the U.S. exchange. The question on synergies, of course, is not that you wouldn't sell something because they're synergies, but on whether or not the buyer is paying you enough to compensate for the loss of those synergies if you kept the asset. These are synergistic to other buyers, just as they might be synergistic to us, and so we're going to look at the price determine -- that determines out of the marketing process in order to make decisions. We do have substantial interest so far in all of these assets.

The other thing I'd note is just that -- and I mentioned this in my preliminary remarks about this motion,

that we do have a shortened procedure for relief, a shortened objection period for stalking horse protections, and so Your Honor should just be aware of that.

I'd like to turn to the objection for the U.S. Trustee. As I mentioned, the first objection was that we should have a form of asset purchase agreement. Again, we don't know that we're going to be using that particular form of a transaction. We might. We're highly likely to for some of these assets, and when we have a form of asset purchase agreement, we've committed to put that in front of people, well in advance of any auction.

Obviously, if we have a stalking horse, the stalking horse will have an important role to play in what's in the asset purchase agreement. And there's many bidders in many auctions where we run the auction off the back of a specific asset purchase agreement or structure that our stalking horse believes is important to the stalking horse.

A related objection is a request that we commit to the U.S. Trustee now to preserve "all books and records." We absolutely intend to retain copies of books and records for the businesses we're selling for a long list of reasons. And any standard form asset purchase agreement, there's a set of covenants about records retention. We're not able to retain records in most circumstances for any purpose whatsoever; generally, there's a purpose limit on our ability to retain

records when we sell a company. One of those purposes is always our ability to investigate or our ability to relate to regulators, our ability to do our taxes. And so, the debtors are not going to lose access to anything that has to do with causes of action or investigations in connection with an asset purchase agreement, but again, with respect, I think the objection is premature, until we have an asset purchase agreement to show to stakeholders so they can review this provision and determine whether or not it's adequate.

We're not going to commit today. We're not willing to commit today to simply preserve all books and records with such simple language.

The other objection from the U.S. Trustee is that we are not agreeing now that we will never release claims against the employees. So, we have committed, because it's obvious and easy to do, that we are not releasing claims against Sam Bankman-Fried, Gary Wang, Caroline Ellison, Nishad Singh, or I believe we have some language, any of their family or related persons. But releases of employees are sometimes an important part of the disposition of a business when you're the buyer because the value of some of these businesses is in the people, and as the buyer, you want the people protected. The last thing you want to do if you buy a business is to have rank-and-file employees sued by the person you just bought the business from.

Now, this raises a related point and it's important to say, I think, for the record, as a more broad -- as a more -- something more for Your Honor to understand, based on the review of Mr. Ray and his team so far, we have no indication that rank-and-file employees of the debtors, generally, were complicit in fraudulent activity. Neither the indictment of Mr. Bankman-Fried, nor the pleas of Ms. Ellison or Mr. Wang, include criminal charges against the debtors as enterprises. Indeed, from my initial remarks, Your Honor, I explained that at least the core part of the fraud could be implemented with a single number in the Code for the platform put in by programmers.

The nature of this is still under investigation to be decided, but, you know, for the sake of all of the employees of FTX, we have no indication that this was the kind of problem that results in a which will charge against an enterprise, as opposed to against individuals at the top.

MS. SARKESSIAN: Your Honor, I have to object. I feel like there's testimony, factual testimony being given here.

THE COURT: I agree and I take no note of it. It's not in evidence.

MS. SARKESSIAN: Thank you.

MR. DIETDERICH: And that is exactly my point, and my point is that this is a sale objection and that when we

have a sale transaction, and if that sale transaction involves the release of employees, we will have to make an evidentiary showing that we have a business judgment for that release. But right now, it's a sale objection; it's not before the Court. And we would submit, respectfully, it's not appropriate to restrict our ability to solicit interest in these companies on a basis that we have to commit now for what's going to be in our sale order or in our asset purchase agreement.

THE COURT: Okay. Thank you.

MR. DIETDERICH: One other thing, Your Honor, before I leave -- sorry -- Mr. Mallon, his objection --

THE COURT: Yes?

MR. DIETDERICH: -- alleges a security interest arising, as best I can understand it, under Swiss law. That objection, obviously, can be resolved by its sale objection, but in addition, we're able to attach a lien to the extent he had a security interest on the proceeds of the sale, that will, of course, resolve in connection with a sale. So, we think that objection should be overruled and the matter reserved for the sale hearing. Thank you.

THE COURT: Thank you.

MR. HANSEN: Your Honor, Kris Hansen with Paul Hastings, on behalf of the Committee.

Just before Ms. Sarkessian goes, I wanted to note

our reservation of rights. I'll be brief. I know we're running long today.

Your Honor, the Committee is taking a very cautious approach to this bidding procedures motion. It's early days in the case and as I mentioned before, we have a lot of concerns about value preservation and value maximization. And so, we support the debtors' view that this is a "wait and see" process. We have a number of issues that we've identified in our reservation of rights from timing to access to information, to be able to make decisions for the debtors and the Committee and for the Court, but also for bidders to be able to make those decisions. And I won't go through them all individually here, I would just, again, refer the Court to our reservation of rights, but I did want to make sure that the Court understood from the Committee's perspective, we may be back, to the extent the debtor seeks to sell an asset and Committee disagrees with that, we may raise an objection at that point in time.

And it's about value maximization and it's about alternatives. One of the things that Mr. Dietderich alluded to is the connectivity of these businesses or maybe the lack thereof, to the broader platform. And as I mentioned earlier to the Court, the Committee is hard at work with the debtors to try to understand what the parameters are for potentially restarting the exchanges and reorganizing this enterprise.

And when we move quickly to sell off pieces of the business, we need to understand their connectedness.

And so, yes, Ledger X, from a factual perspective, Embed, and others were purchased more recently, but we don't know if they're entirely severable, (indiscernible) if that severance of them from the broader platform will have a deleterious effect on the value of the enterprise as a whole. So, that's something that we're keeping an eye on. We recognize this process is moving quite quickly, so we're doing our work quickly, as well, but we just wanted to note our reservation for the Court.

THE COURT: Okay. Thank you.

MR. HANSEN: Thank you, Your Honor.

MR. HARVEY: Good afternoon, Your Honor. May I please the Court? Matthew Harvey from Morris, Nichols, Arsht & Tunnell, on behalf of the Ad Hoc Committee of non-U.S. customers of FTX.com.

I rise, Your Honor, only to say a couple of sentences of our resolution with the debtors. Your Honor, we filed a limited objection to the sale. We discussed our limited objection with the debtors in connection with, excuse me, a larger role of the Ad Hoc Committee -- with the larger role of the Ad Hoc Committee as serving and ensuring that FTX.com customers have access to information and an opportunity to be heard, whether there may be conflicts --

and maybe "conflicts" isn't even the right word -- with the debtors or the official Committee.

We were pleased with the debtors' acknowledgment and discussion with us of the group's role in the cases and representations regarding further cooperation going forward and, accordingly, we're withdrawing our objection. Thank you.

THE COURT: Okay. Thank you.

Anyone else? Ms. Sarkessian?

Your Honor, our objection set forth, I would say, four categories of objections. We have resolved two of them. So the first objection was going ahead with the sale without having adequate information and that included both -- I guess I may have used the form asset purchase agreement -- any type of sale agreement, whether it be stock sale, asset sale, there is no form of sale agreement and, of course, there is no schedules and statements or Rule 2015.3 reports.

We have resolved that. The debtors are going to be filing forms of whether it be asset purchase agreements, stock purchase agreement, whatever it is, at least two weeks before the sale date of any sale. They are also going to give the U.S. Trustee and the committee, even before that, before its uploaded to the data room, they are going to give the forms to us.

With respect to the schedules and statements an

order has been -- a proposed order has been submitted, maybe Your Honor has already signed it, where the schedules and statements will be filed for the asset sales, at least, two weeks prior to the sale which will give my office enough time to take a 341. Then the same will be done for the Rule 2015.3 reports for those debtors who are selling stock in non-debtor subsidiaries. They would be filing that report, at least, two weeks. So I will still have to do two 341 Meetings on those, but at least I won't have to do three. So that is definitely an improvement. So that has been resolved.

The other thing was, essentially, a reservation of rights regarding the ombudsman because there was nothing in the record about the debtor -- the privacy policies for these particular businesses and now they have put in that evidence. They have attached all the privacy policies. I think there is an even an official translation of the Japanese one. And based on our review of that we believe that the debtor has established that a consumer privacy ombudsman would not be required with respect to these particular sales. So we are not pursuing that objection.

So what remains, and -- so there's two issues that remain. I think on the records retention, you know, we just want to make sure nothing is lost that the debtors are retaining all records that could potentially be relevant in

any civil criminal proceeding. You know, we will look to see what the wording is when we see if there is a sale agreement, but, you know, we are glad that they are willing to do that and we think that that is very important.

We just want to make sure that everything is preserved and there is not some type of discretion, I guess I would say, from the debtor's viewpoint of -- and we understand that the original records will be transferred, we are just talking about copies here. But we don't want them to say, well, we're not going to keep a copy of this because the debtor makes the determination that it doesn't think it's going to be relevant down the line in some proceeding.

Well a regulator might have a different view of that. So we think the widest -- I mean, again, we're talking about saving copies of documents almost all of which, I am going to guess, are electronic. So I don't think it would be any burden on the debtor. I don't think that needs to be addressed now. I agree with that. I just wanted to put it on the radar.

The issue does need to be addressed now is we are very concerned about the possibility that the debtor is going to be selling or welcoming offers to purchase causes of action against current or former -- it's not just rank and file employees, its directors, its officers, or employees. That specifically is mentioned in the bid procedures that if

someone is interested in purchasing it they have to indicate that. So I think they're welcoming that type of thing.

Yes, after we made our objection or we -- after we conveyed our objection to the debtors on this regard they put in a paragraph in the order that said, okay, with respect to Mr. Bankman-Fried and three other top officers we agree, we will not sell any causes of action against them or their family members. And that is a good first step, but I think that it seems that the debtors have concluded, at this very early stage of the case, before there has been an investigation, an examination by an independent entity into possible causes of action arising out of the debtors -- the events that cause the debtor to file for bankruptcy.

Before that has taken place they have reached the conclusion that there is only four people at the top that were responsible for all of this and that out of the hundred plus companies of the debtors that there was nobody else, be it other officers or other employees, that either assisted them in wrongdoing, or aiding and abetting, or were negligent and missed something they should have seen, turned a blind eye maybe nobody else was, maybe it was only four people that committed this, allegedly, massive fraud involving billions of dollars and nobody else in the organization and none of their professionals and nobody else knew about it.

There needs to be an investigation before those

causes of action are sold. You know, okay, there's a business in Japan. Where is the evidence that nobody in Japan was involved with any wrongdoing? Where is the evidence that nobody in Japan knew about any of this? We don't know. It's too early.

So we feel that given the situation that there should be added to that list, you know, not just four names; any officers or directors, any employees, any family members of officers, directors, any companies that are controlled by officers or directors, again former or current, or controlled among an officer and their family members. I mean there is a wide range here.

These causes of action should not be sold at this point in time. Now the debtors say, oh, well, you know, we can deal with that at the sale. Here is the problem: right now we have no purchase agreement to look at. We have no idea what they are proposing in this regard. We are going to be getting, potentially, if there's stalking horses, seeing a stalking horse asset purchase agreement or a stock purchase agreement. We are going to have seven days to review it and make an objection; it's a very small period of time.

There is going to be schedules. There will be schedules about which causes of action are going to be purchased. There might be placeholders in those schedules. I mean we have seen this many a time. Schedules aren't

filed, they're not ready yet. Then we go to the auction maybe somebody else or another stalking horse wins. Now you have a tiny window of a few days between the auction and the sale hearing where they're negotiating the purchase agreement; that gets filed, you know, maybe a day before the sale hearing.

Again, a lot of times, oh, the schedules aren't attached, they're not finished, or here they are, but they can be amended. They can be amended up until the time of the closing or even after the closing. So we're going to be scrambling trying to figure out its hidden somewhere in there are they selling causes of action. I mean it's not going to be like there is a bright shining light on it.

That is a real concern. It's going to be a very small period of time to look at it and we might not see it. It might not even be included or, again, they could amend later after the sale hearing. That is typically said, oh, we have the right to amend the schedules.

So in this case, given what the situation is, this early on, before an independent investigation we think it is just completely inappropriate to be selling -- to be even considering selling these types of claims. If the debtors are willing to have a prohibition against claims against the top four they should be willing to expand that to all directors, officers, employees, again, companies that are controlled by

them, and professionals, prepetition professionals; no claims against them should be sold.

So that is what we think is appropriate at this point in time. And if the debtors cannot do that, if they say we're not able to do that then maybe the sale should be put off. Maybe it's too early to do the sales if that is the situation because we don't have the information, we don't have the investigation, and you are going ahead with a sale. So either that has to be carved out of the sale or you have to wait to do the sale until that investigation is complete. That is what the U.S. Trustee thinks one choice or the other. You cannot move forward at this stage of the case without an independent investigation selling causes of action against directors, officers, employees or professionals.

THE COURT: Well isn't there a way -- I mean, I certainly would consider any requests from the U.S. Trustee if the debtors were trying to jam the Trustee at the time of a sale hearing that you didn't have time to conduct whatever review you needed to do, to raise whatever objections you needed to raise at the time of the sale hearing.

We don't even know yet whether the debtors are even going to sell these assets. And we don't know whether it's going to be an APA, a merger, a stock purchase; we don't know at this point. I think they're -- I think the debtors are trying to dip their toe into the water to see what

happens, see what kind of interest they receive. I think it's important to be allowed to do that.

We always have -- we have a lot of cases where there's an expedited sale process for one reason or another. I understand your concerns about whether there is other people who might have been at fault other than these four executives that have been specifically named. And I would also, perhaps, say to the debtors that if they do receive a stalking horse bid that includes the purchase of causes of action that they immediately notify the U.S. Trustee so that its not hidden in a gigantic sale agreement, that you have some advanced notice that the issue is live. It might not be. They might not want to buy the causes of action. They might just want to buy the platform or the assets and leave the employees behind, I don't know at this point.

MS. SARKESSIAN: Your Honor, could we -- I mean following up on that idea, I think it should be -- we would appreciate it if it was more than just letting us know. Of course, we would like to know. We think this is important enough that there be a filing that highlights so that everybody can see if the debtors were selling causes of --

THE COURT: I agree, that should be done. It can be done like we do with a motion to approve a DIP. You know, we have certain requirements that certain things have to be highlighted in that motion so that everyone knows that it's

in there so we can fashion a form of order that includes that when they file -- when they receive a stalking horse bid and they file it they include in that filing something that highlights for everybody that they're proposing to sell the causes of action.

That helps alleviate some of the time issues for you and for others who might want to object. And I am certain that Mr. Hansen and his colleagues, on behalf of the committee, are going to be investigating whether there are causes of action against any of these other employees. And hopefully we will have some understanding of that as well before we get to the point where the sales are being sought to be approved.

MS. SARKESSIAN: Your Honor, thank you. I appreciate that. I think, again, it could also come up, again, assuming if the stalking horse bidder is either not the winning bidder or is the winning bidder, but the agreement gets amended, which is possible, right, I mean after the auction, okay, we agree to pay more, but then we want these causes of action. Again, at whatever stage if causes of action are being sold that they be highlighted. So whether it's a stalking horse stage, whether it's the winning bidder at the auction, and now they're filing their purchase agreement to highlight that.

THE COURT: I agree.

MS. SARKESSIAN: Specifically, not just we're selling causes of action, what causes of action.

THE COURT: I agree.

MS. SARKESSIAN: Thank you, Your Honor.

THE COURT: That makes sense.

MR. DIETDERICH: Thank you, Your Honor. Andy Dietderich.

We can confirm that is a great approach to the solution. In fact, that is exactly why we actually had it called out in the solicitation of indications of interest because we knew we had a special process to run for any bidder that wanted to do the release.

THE COURT: Okay.

MR. DIETDERICH: So thank you, Your Honor. With that I don't think there is any other comments on the sale order. So I would respectfully ask the Court to enter the order.

THE COURT: Well we need to revise the order.

MR. DIETDERICH: Revise the order, of course.

THE COURT: Then submit it under COC and we will get it entered.

MR. DIETDERICH: All right. Thank you.

With that I think the only business -- the only remaining business is the scheduling matter.

THE COURT: Okay.

Mr. Bromley, go ahead.

MR. BROMLEY: Good afternoon. May I please the Court, Jim Bromley of Sullivan & Cromwell on behalf of the debtors, Your Honor.

This is the time that we need to deal with the scheduling of the motion for the appointment of an examiner. The motion has been filed by the U.S. Trustees Office. We have consulted with the Office of the U.S. Trustee and the creditor's committees counsel. And the view of the debtors and the creditor's committee's counsel is that the hearing that has been reserved on the 8th of February, which is an omnibus hearing date, is the appropriate date to go forward with the motion for the examiner.

We, the debtors, are cognizant that the motion has been filed for some time, but the date has been held in abeyance. We do have certain limited discovery requests to make of the U.S. Trustees Office. We will have submissions ourselves that we will be making, both evidentiary and legal. Our suggestion is that the papers and our declarations in support of our papers be filed on Monday, January 30th. That would give the U.S. Trustees Office time to respond and to seek to depose any witnesses that we have.

We would suggest, as well, that the U.S. Trustees Office, and the committee, and we consult for a pretrial order that would be submitted to the Court no later than

Friday the 3rd of February.

THE COURT: Ms. Sarkessian, any -- well, let me ask Mr. Hansen first. Now that we have a committee we need to know your view as well.

MR. HANSEN: Exactly, Your Honor. So we agree with Mr. Bromley. Again, its Kris Hansen with Paul Hastings on behalf of the committee. We agree with Mr. Bromley in terms of the dates.

I just wanted to point out for the Court that we also may have evidence to present. We will make that decision in enough time to let Ms. Sarkessian know so that she can similarly take discovery of our witness as well if we have that.

THE COURT: Well I currently have an omnibus hearing on the 8th scheduled at one for this case, and I have two other matters on that morning. So if we're going to have an extensive evidentiary presentation I may need to move the date or if I can't I will move the other matters and move this one up for the full day. It sounds like we may need a full day for this hearing.

MR. HANSEN: I think between argument and potential evidence I don't know that it would take a full day, but I think you should reserve that, Your Honor.

THE COURT: Okay.

MR. HANSEN: Jim, I'm not sure if you have a

different view.

MR. BROMLEY: I agree with that, Your Honor.

THE COURT: All right. Let me hear from Ms. Sarkessian.

MS. SARKESSIAN: Thank you, Your Honor. For the record Juliet Sarkessian on behalf of the U.S. Trustee.

Your Honor, we understand from the last hearing that Your Honor had the February 20th date that is scheduled in this case that Your Honor has the entire day for this case if I am correct about that.

THE COURT: February 20th?

MS. SARKESSIAN: I'm sorry, January 20th. I don't know why I keep saying February. January 20th.

THE COURT: That's a holiday, Court holiday.

MS. SARKESSIAN: January 20th. Friday, January 20th which I believe had been scheduled primarily for a hearing -- well, there's a few things:

There's a hearing in connection with the Robinhood stock which has been seized. And I believe last time around debtor's counsel indicated that might be moot because of the seizure. There were also fi

The U.S. Trustee believes that that would be the best date for the hearing on the examiner, in part, because we do have issues with certain of the retention applications that are scheduled for hearing on January the 20th that the

scope of the retentions encompasses work that might be done by an examiner. So we think that argument, sort of, dovetails with the examiner motion and it makes sense to have them both heard at the same time.

Our examiner motion has been on file since December the 2nd. So, obviously, has had more than enough time to address that. We recognize that committee counsel has not been -- was retained on, I believe, December the 20th, but nevertheless, you know, there has been a good amount of time to respond. So we would ask for that.

Absent in the alternative we would ask if Your Honor has a date. We too were concerned about February the 8th not being adequate time with it being scheduled at 1 p.m. So we were wondering if Your Honor has a date between the 20th, January 20th and the February the 8th that would have more time available then the 8th.

The other thing I would say is that, you know, the U.S. Trustee would need to get the reply on file three days -- three business days prior to the hearing. So we would -- given how long parties have had our motion we would like to have, at least, a week between when the objections are filed and when our reply is due.

If, for example, Your Honor was to say put the hearing on the 8th since our reply would be due February the 3rd we would want objections filed to January the 27th to

give us one week.

THE COURT: Okay. All right. I do think I need to -- the 20th doesn't work, I don't think, for this. It's too soon. There is outstanding discovery. If it hasn't already been issued it will be issued, I assume.

Are you taking any discovery?

MS. SARKESSIAN: I have received no discovery. I am trying to imagine what possible discovery there could be against the U.S. Trustee, but I have not received any.

We have not seen an objection, so we don't know who their witnesses are. We have no idea if they're, in fact -- Your Honor, the U.S. Trustees position is that this is mandatory under the code and, therefore, there is not a need to have any evidence. It's legally mandatory. Nevertheless, we understand that the parties may want to put on evidence, but we don't know who they plan to put on, what they plan to put on; we have no idea.

THE COURT: I think you're familiar with my position on the mandatory nature of the appointment of an examiner.

MS. SARKESSIAN: Yes, Your Honor.

THE COURT: For the record, I do not believe it's mandatory.

MS. SARKESSIAN: Yes.

THE COURT: Let's do this: I think the 8th -- I

want to make sure we have a full day. I am going to reschedule this for February 6th which is Monday of that week. We will start at 9:30 a.m. The debtors and the committee's responses will be due by the 25th. Then the Trustee will have until the 1st.

So you have a week, Ms. Sarkessian, for your reply.

MS. SARKESSIAN: Yes, Your Honor. Thank you.

THE COURT: Then we will have the hearing on the 6th. If there is a -- pretrial orders are always helpful for me. So if there is -- if we're going to have an evidentiary hearing on the 6th let's have a pretrial order by close of business on the 3rd. So 5 p.m. on the 3rd.

Mr. Bromley and Mr. Hansen, one, if you are going to take discovery of the U.S. Trustee, please, do that immediately so that Ms. Sarkessian knows that she needs to do some discovery work.

Ms. Sarkessian, in light of my view on the mandatory nature of the appointment of an examiner I don't know if that now opens up for you your desire to take discovery of the debtors, but if you do you should do that, obviously, as soon as possible.

MS. SARKESSIAN: Understood, Your Honor.

THE COURT: Did I miss anything? Did I cover all of the issues? Do I have all of the dates that we need for

everybody?

MR. BROMLEY: I think that is all of the dates that we need, Your Honor. Thank you very much.

THE COURT: Okay. Ms. Sarkessian, anything else?

MS. SARKESSIAN: I don't -- I think those are all the dates in connection with the examiner motion.

THE COURT: Okay. Thank you.

All right. Are we done? Oral argument 12 minutes.

MR. GLUECKSTEIN: 30 seconds.

(Laughter)

MR. GLUECKSTEIN: We really appreciate the Court indulging us for such a long hearing today.

The only other scheduling matter I wanted to raise, Your Honor -- Brian Glueckstein for the debtor. There was reference to the January 20th hearing. We did elude to this in the status conference a week ago, we have been in touch with counsel for BlockFi and we are asking to adjourn the hearing on the 20th with respect to our motion to enforce the automatic stay with respect to the Robinhood issues. BlockFi has a related motion, an evidentiary motion, that is part and parcel of that hearing.

We are asking at this time that that hearing be adjourned to a date to be determined. We will come back to the Court in light of the Government seizure of the shares.

There was a proceeding in the BlockFi bankruptcy case earlier this week and that parties are continuing to talk about next steps there with respect to all of the issues involving the Robinhood shares. We would benefit from some time.

So we would ask, with Your Honor's permission, that we adjourn that hearing on those two issues. There are other things, of course, scheduled that day, the retention motions and status conference that Your Honor ordered this morning on the redaction issues. But with respect to the debtor's motion and related evidentiary issue we ask that that be adjourned.

THE COURT: What is BlockFi's position on the continuance of their motion?

MR. GLUECKSTEIN: They represented to me -- they -- we had an email exchange this morning where they said they were okay with us so representing.

THE COURT: Okay. We will take that off then for the 20th; both of those off for the 20th.

Anything else before we adjourn?

(No verbal response)

THE COURT: All right. Thank you all very much. We are adjourned. I will see everybody on the 20th.

(Proceedings concluded at 1:48 p.m.)

CERTIFICATION

We certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter to the best of our knowledge and ability.

/s/ William J. Garling January 12, 2023
William J. Garling, CET-543
Certified Court Transcriptionist
For Reliable

/s/ Tracey J. Williams January 12, 2023
Tracey J. Williams, CET-914
Certified Court Transcriptionist
For Reliable

/s/ Mary Zajaczkowski January 12, 2023
Mary Zajaczkowski, CET-531
Certified Court Transcriptionist
For Reliable

/s/ Coleen Rand January 12, 2023
Coleen Rand, CET-341
Certified Court Transcriptionist
For Reliable